

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

vs.

MARK ELLIOT ZUCKERBERG,

Individually, and

FACEBOOK, INC.,

Defendants.

No. 1:10-cv-00569
(RJA)

August 3, 2012

10:56 a.m.

Deposition of PETER V. TYTELL, held at
the offices of Gibson, Dunn & Crutcher LLP,
200 Park Avenue, New York, New York, before
Laurie A. Collins, a Registered Professional
Reporter and Notary Public of the State of New
York.

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A P P E A R A N C E S:

BOLAND LEGAL, LLC

Attorneys for Plaintiff

1475 Warren Road

Unit 770724

Lakewood, Ohio 44107

BY: DEAN BOLAND, ESQ.

(via telephone)

GIBSON, DUNN & CRUTCHER LLP

Attorneys for Defendants

200 Park Avenue

New York, New York 10166-0193

BY: ALEXANDER H. SOUTHWELL, ESQ.

SRIPRIYA NARASIMHAN, ESQ. (a.m. only)

MATTHEW BENJAMIN, ESQ.

AMANDA AYCOCK, ESQ.

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(Mr. Tytell not yet present.)

MR. SOUTHWELL: It's Alex Southwell. Laurie Collins is here from Veritext. I'm going to ask that she go on the record and then let's just go through a few things, and then we can proceed.

MR. BOLAND: That sounds good.

MR. SOUTHWELL: So I guess just a few things so that it's clear, you know. Dr. McMenamin is here and available. You sent an e-mail last night at about 8 p.m. that seemed to cancel that deposition, although, frankly, it was never really explicit. I find that often your e-mails don't specifically respond to the issues. And so, you know, you didn't ever explicitly say you did not want to proceed with Dr. McMenamin. He's here, in any event, and Mr. Tytell is also here.

I presume you do not want to proceed with Dr. McMenamin; is that right?

MR. BOLAND: Yes, my understanding was we were going to try and do Mr. Tytell's deposition today because he is traveling after the 13th; right?

1 Proceedings

2 MR. SOUTHWELL: Yeah, but you had asked
3 for half days for both, so theoretically you
4 could have done both. I take it you don't
5 want to proceed with Dr. McMenamin, and that's
6 your right. We will still be billing you for
7 his appearance fee and travel costs.

8 Now, we did rearrange schedules, and we
9 have Mr. Tytell here. You know, obviously you
10 had -- he had been noticed for Thursday, and
11 you canceled that one midnight the night
12 before, due to the travel difficulties you
13 had. And so we have rearranged things so that
14 he is here.

15 We made the copies that you have just
16 asked for, but we need to discuss his fee,
17 which we talked about. His fee is \$3400.
18 There is a cancellation fee from his having
19 canceled yesterday. So are you prepared to --
20 how do you want to arrange for the payment of
21 this?

22 MR. BOLAND: Well, as I said in the
23 e-mail -- by the way, Mr. LaPorte should have
24 received his payment by now. Have you gotten
25 confirmation from him that he received his

Proceedings

check?

MR. SOUTHWELL: Yes, we did get that.

Thank you.

MR. BOLAND: Okay. Good. The day you had sent me an e-mail saying please send it overnight mail, give me a confirmation number, that e-mail didn't get to me before the check went out in regular mail. But he got it, which is the point.

I propose that the fee that Mr. Tytell indicated was his fee for his deposition, as soon as the deposition is over, I will go and do that one overnight mail, FedEx, and send you the confirmation number so that you'll have it and he'll have it. And then he'll get it by -- well, actually if it's -- he'll get it by Monday, because there's not going to be on Saturday, typically.

The cancellation fee, I don't -- this is the first I'm hearing of a cancellation fee, so I don't know what to tell you about that. I will have to confer with my client and co-counsel.

MR. SOUTHWELL: I mean it's fairly

1 Proceedings

2 typical, if you reserve an expert witness to
3 be available for deposition and they're not
4 deposed, that they charge either the full fee
5 of half fee. His fee is the half fee. So we
6 would ask that you pay that as well.

7 Maybe you can confer during the course
8 of the deposition and then you can make -- as
9 I understand it, you're making -- you're
10 representing on the record that you will pay
11 at a minimum his \$3400 fee and that you will
12 put that in a check -- immediately on a check
13 and in a FedEx overnight to Mr. Tytell's
14 direction at the address on his report
15 immediately following this deposition;
16 correct?

17 MR. BOLAND: Yes, I will do that, and I
18 will even send an e-mail to you so you have
19 the confirmation number that you need as well
20 for the FedEx. That's not a problem.

21 MR. SOUTHWELL: The cancellation fee is
22 an additional \$1700. I would ask that you
23 consult about that. We would ask that you pay
24 that as well. We won't charge you for the
25 cost of this phone call for the deposition,

1 Tytell

2 but I would ask that you do that. So why
3 don't you ask -- inquire into that and let us
4 know as we get to the end.

5 I'm going to release Dr. McMenamin, and
6 I'm going to bring Mr. Tytell in and you can
7 proceed. Okay.

8 MR. BOLAND: Very well.

9 MR. SOUTHWELL: All right. Stand by.

10 (Pause.)

11 (Mr. Tytell joins proceedings.)

12 P E T E R V. T Y T E L L ,
13 called as a witness, having been duly sworn
14 by the notary public, was examined and
15 testified as follows:

16 EXAMINATION BY

17 MR. BOLAND:

18 Q. Mr. Tytell, this is Dean Boland. I
19 represent Paul Ceglia in this matter. I think we
20 have at least been in the same room once before at
21 Gibson, Dunn's offices; right?

22 A. Yes.

23 Q. And since we're doing this by telephone
24 today, if at any point because of technological
25 issues you can't hear my complete question, please

1 Tytell

2 let me know and we'll figure out that problem and
3 make sure you can hear everything I'm saying.

4 Can you hear me at this point?

5 A. Yes, I can. Thank you.

6 Q. If I need to speak up or I'm speaking
7 too loudly, let me know, since I can't hear what
8 you're hearing on that side, obviously.

9 A. Okay. I'm sure that the technology
10 will be good to us.

11 Q. Let's hope.

12 I wanted to talk about -- if the court
13 reporter can hand the witness your report,
14 Mr. Tytell, document Number 330, I believe it is.

15 MR. SOUTHWELL: Just a minute. We're
16 getting it out.

17 MR. BOLAND: What was that, Alex?

18 MR. SOUTHWELL: I said just a minute,
19 we're getting it out to hand to the court
20 reporter.

21 (Tytell Exhibit 1, expert report of
22 Tytell, marked for identification.)

23 MR. SOUTHWELL: Mr. Boland, just for
24 the record, this is document 330 in the court
25 file, which is the report of Mr. Tytell.

1 Tytell

2 MR. BOLAND: It's Mr. Tytell's report,
3 Alex?

4 MR. SOUTHWELL: Yes, document 330.

5 MR. BOLAND: Very good. Very good.

6 Q. And if he could just identify that for
7 the record when he has it.

8 A. Yes, I have this document. There's a
9 front page that says Exhibit F.

10 Q. Is that the report that you submitted
11 in support of the defendants' motion to dismiss?

12 A. I'm looking through. I'll be with you
13 just one sec.

14 Q. Very well.

15 (Pause.)

16 A. Okay, Mr. Boland.

17 Q. Yes.

18 A. Just because of the distance here, I
19 can't tell if, you know -- I want to catch your
20 attention there.

21 With respect to the document that I
22 have before me marked Tytell 1, on page 10
23 somewhere below the middle of the page, there's a
24 blank space, and the word "redacted" appears
25 there. That was not -- that's not how it was on

1 Tytell

2 page 10 of the report that I submitted.

3 Q. To make this easier, Mr. Tytell, I
4 think both defense counsel and I would agree that
5 for some of the expert reports that they provided
6 and some that we had provided, because of court
7 orders, we have gone ahead and redacted portions
8 of those reports.

9 And I would acknowledge that the report
10 actually filed by you, as my recollection, had
11 portions of it redacted that were not redacted by
12 you. So that's not -- that's not an issue.

13 Other than those redactions, is there
14 anything else that looks incomplete about the
15 report you have in front of you?

16 A. Well, I was going to add that at the
17 top of the various pages of the report and of the
18 attached exhibits, there is a line that says Case
19 1:10-cv, et cetera, et cetera -- I'm sure you know
20 what that line is -- and the date --

21 Q. Yes.

22 A. -- and then some pagination. So that
23 was not present on the document that I submitted.
24 I'm sure you're aware of that.

25 Q. Yes.

1 Tytell

2 A. Okay. And then also what I'm looking
3 at is obviously a printout of some document that
4 was, I guess -- this line at the top -- I don't
5 know if that was put on by the attorneys or the
6 courthouse or some other system for the documents.

7 But the document I'm looking at
8 obviously has had some changes made to it since I
9 submitted my report. And then after those changes
10 were made, this document has also been printed
11 out. So this is not really exactly the thing that
12 I submitted.

13 Q. Did you submit your report to the
14 defendants in electronic form? Is that what
15 you're saying?

16 A. Yes.

17 Q. And other than those comments you made
18 about the redaction and the printed material
19 across the top of the page, are there any other --
20 and that the document is printed versus
21 electronic, any other differences between the
22 content of that Tytell Exhibit 1 and your report
23 other than those things?

24 A. Without actually doing a side-by-side
25 comparison, I believe that all the words that are

1 Tytell

2 here are words that were in my report, except for
3 the redacted ones, of course, and the heading that
4 we've discussed.

5 Q. Very well.

6 Mr. Tytell, are you a qualified
7 forensic document examiner?

8 A. Yes.

9 MR. SOUTHWELL: Objection to the form.

10 THE WITNESS: I'm sorry.

11 MR. SOUTHWELL: Just wait for my
12 objection.

13 Q. And are you a trained or qualified
14 handwriting examiner?

15 A. I have been so accepted by courts.

16 Q. And about how many times have you --
17 let's break it up.

18 How many times have you actually done
19 handwriting analysis, whether or not you actually
20 had to submit it to a court?

21 A. By "handwriting analysis," what do you
22 mean by that term, please?

23 Q. Well, since I'm a layperson, I'll look
24 at it this way: How many times have you been
25 hired by a client to compare a signature on a

1 Tytell

2 document with known signatures of that person to
3 see if they are consistent with each other?

4 A. Okay. I couldn't count them for you,
5 but certainly many hundreds if not thousands of
6 signatures over the years.

7 Q. And have you been asked to do
8 comparisons of other types of handwriting other
9 than signatures?

10 A. In the past.

11 Q. Yes.

12 A. We're talking about sort of generally
13 my history here, I think?

14 Q. Yes, sir.

15 A. Okay. And the answer would be yes.

16 Q. And about how many years have you been
17 doing those types of analyses, comparing
18 signatures or comparing a handwriting sample with
19 a known handwriting sample, that kind of thing?

20 A. Well, going to court for those purposes
21 is 42 years next month for my first court
22 appearance, and obviously training and some
23 casework prior to that. So a long time.

24 Q. Had you had any professional
25 relationship with any of the defendants' experts

1 Tytell

2 before they became part of this case on the
3 defendants' side?

4 A. Okay, could you tell me which -- could
5 you give me a list of defendants' experts so I can
6 check that off?

7 Q. Sure. Let me ask you, have you read
8 other expert reports involved in this case on
9 either side?

10 A. Yes, I have.

11 Q. Which of the defendants' experts
12 reports have you read?

13 A. Professor Romano and Mr. Lesnevich.

14 Q. Have you had conversations with the
15 other experts whose reports you have not read?

16 A. Which experts would they be, please?

17 Q. Gerald LaPorte?

18 A. Well, I've had conversations with
19 Mr. LaPorte, many of them, not necessarily about
20 this case.

21 Q. Albert Lyter?

22 A. Well, what kind of conversations are
23 you asking about? Hi, how are you, how was the
24 flight?

25 Q. No, I'm asking if you had conversations

1 Tytell

2 with Albert Lyter about his report, since you've
3 indicated that is not one of the ones you've read.

4 A. Oh. No.

5 Q. Have you had conversations with Albert
6 Lyter about your report and the conclusions and
7 results that are in it?

8 A. No.

9 Q. Have you had conversations with any of
10 the other experts from the case about the contents
11 of your report?

12 A. Again, could you be a little more
13 specific, please?

14 Q. Did you discuss with Gerald LaPorte the
15 contents of your report?

16 A. No.

17 Q. Did you discuss it with Frank Romano?

18 A. This would be after I had written the
19 report, I assume, because how could I discuss the
20 contents until the report was finished. Would
21 that be correct?

22 Q. Yes.

23 A. So the answer -- well, my report was
24 March 25th. I don't think I've had the pleasure
25 of Professor Romano's company since then. So I

1 Tytell

2 couldn't have discussed it with him.

3 Q. And when were you first contacted by
4 anyone on behalf of the defendants to participate
5 as an expert in this case?

6 A. That would have been almost two years
7 ago now.

8 Q. And when you were contacted -- after
9 you were contacted, how long did it take before
10 you were retained by the defendants?

11 A. Well, the formal retention would have
12 come about two-thirds of a year later.

13 Q. And what was your understanding at that
14 time as to why you were being retained in this
15 case?

16 A. My initial understanding was that I was
17 being retained to look at the typography, if you
18 will, the printed portions of a two-page document
19 headed "work for hire" -- "work for hire," in
20 quotation marks, contract.

21 Q. And had you done that kind of analysis
22 of the typography, as you put it, in prior cases?

23 A. Yes.

24 Q. Did there come a time, before you did
25 your analysis of the typography in this case, that

1 Tytell

2 you had a conversation with defendants' counsel?

3 I'm not asking about the contents of it. I'm

4 asking did you speak with them before you actually

5 did your analysis of the contract in this case.

6 A. There was an initial phone call to ask

7 if I would be willing to undertake some work on

8 behalf of that client.

9 Q. Do you remember, again, not what was
10 said but who the person was you spoke to from the
11 defendants' attorneys during that conversation?

12 A. This would be the first conversation
13 that I had or subsequent?

14 Q. The first one.

15 A. A Mr. Orin Snyder, I believe.

16 Q. And have you had conversations with any
17 of the other lawyers from Gibson, Dunn, again,
18 without telling me what was said? I just want to
19 know who else you spoke to.

20 A. Well, looking at the people in the
21 room, I would say the four people sitting here.

22 Q. Would that include Alex Southwell?

23 A. That would include Alex Southwell.

24 Q. Matthew Benjamin?

25 A. Matthew Benjamin would also be

1 Tytell

2 included.

3 Q. Amanda Aycock?

4 A. Yes, she would also be included.

5 Q. You said there were four people. Who
6 else was in the room? I can't see, obviously.

7 A. Sripriya Nara --

8 MR. SOUTHWELL: Narasimhan.

9 A. Narasimhan. It's easier in Hungarian.

10 Q. At different times since you've been
11 retained in this case, you've had conversations
12 with those individuals from Gibson, Dunn?

13 A. Yes, I have.

14 Q. Do you have a written agreement with
15 the defendants for your work in this case?

16 A. I have submitted to the defendants my
17 standard terms and conditions, as I do with
18 everyone who inquires about retaining me. And
19 generally if I am retained and I assume those
20 standard terms and conditions apply. And I
21 believe there was also a letter from Gibson, Dunn
22 which would I guess be their standard document.

23 Q. Mr. Tytell, do you know --

24 A. Excuse me, you're breaking up now. The
25 technology is not being as kind as we had hoped.

1 Tytell

2 Can you please repeat that?

3 Q. Yes. Can you hear me a little better
4 now?

5 A. Yes, indeed.

6 Q. Do you know if any other of -- well,
7 let me just ask you specifically. Do you know at
8 the time you were retained by the defendants was
9 Gerald LaPorte already retained by them, if you
10 know?

11 A. I don't know.

12 Q. How about Mr. Lesnevich, was he already
13 retained by them, if you know?

14 A. I believe he was.

15 Q. And then Albert Lyter, was he already
16 retained?

17 A. I do not know.

18 Q. And before working on this case, did
19 you know who Mr. Lesnevich was?

20 A. Yes.

21 Q. And is he also a qualified forensic
22 document examiner like you are?

23 A. I don't know about the "like I am"
24 part, but I know that he certainly is a qualified
25 document examiner. I would, you know, say yes.

1 Tytell

2 Q. Do you know if he has any
3 qualifications to analyze handwriting similar to
4 the questions I asked you about yourself earlier?

5 A. I know that he has been trained in that
6 field and has been accepted as an expert in courts
7 on numerous occasions.

8 Q. Have you ever been on the opposite side
9 in a case with Mr. Lesnevich specifically dealing
10 with an analysis of handwriting?

11 A. Probably.

12 Q. Do you recall what case or cases that
13 might have been?

14 A. I think there was a case maybe 30 years
15 ago that involved a signature.

16 Q. Is that all you can remember about
17 that?

18 A. I remember that we looked at different
19 known samples of the person's handwriting.

20 Q. I'm assuming a 30-year old case you
21 don't remember a lot of the details about it?

22 A. That would be correct.

23 You're breaking up again, Mr. Boland.
24 I don't mean to interrupt you, but you obviously
25 can't hear what's going on at this end. I may

1 Tytell

2 have to interject when --

3 MR. SOUTHWELL: Mr. Boland, it sounds
4 like it sort of cuts in and out as if you're
5 on a cell phone or a hand -- some sort of
6 other device. Is that right or...

7 MR. BOLAND: Well, I have a headset
8 connected to my phone so I can sort of type
9 and talk at the same time, and that might be
10 causing a problem.

11 MR. SOUTHWELL: Yeah, I don't know if
12 you're moving around at that point and maybe
13 that's causing it to break up. But it sort of
14 comes in and out. So we'll just have to let
15 you know when it occurs.

16 THE WITNESS: It sorts of sounds as if
17 you're gargling while speaking.

18 Q. Well, Mr. Tytell, I don't take it as
19 rude at all if you interrupt me because you can't
20 hear. I want to make sure you hear the question.
21 So that's not a problem at all.

22 A. Okay. Good.

23 Q. Now, can you hear me clearly at this
24 point?

25 A. No, it's that jagged kind of

1 Tytell

2 interruption again. But maybe --

3 MR. BOLAND: Alex, can you give me the
4 number to the conference room there? I will
5 switch devices and call right back.

6 (Pause.)

7 Q. Mr. Tytell, did either your assignment
8 or your tasks that you were given in this case
9 change at any point from the time you were
10 retained to when you eventually produced your
11 report?

12 A. I would say so, yes.

13 Q. And can you describe how that change
14 occurred?

15 A. That change occurred about -- shortly
16 after 9 a.m. on July 14th, because I was there to
17 examine the document, mainly with an eye towards
18 the printing on the document. And when the
19 document showed up, it presented an entire new set
20 of issues that had not been anticipated.

21 Q. And what were those issues? What would
22 you summarize those to be?

23 A. That the -- well, prior to seeing this
24 document, I had the opportunity to review copies
25 of a two-page document headed "work for hire"

1 Tytell

2 contract, and these were copies that had been
3 filed with the original papers filed in this
4 matter in I guess mid 2010.

5 I had also seen copies that were
6 attached to the declarations of Mr. Osborn,
7 Mr. John Paul Osborn, and Dr. Valery Aginsky. And
8 based on the copies I had seen, I had formed an
9 impression of what the document should look like
10 or would look like when I actually saw the
11 original.

12 And when I saw the original on the
13 morning of July 14th, it did not look like the
14 document that I had anticipated. I had
15 anticipated a document with handwriting and
16 signatures and initials and dates in black
17 ballpoint pen.

18 That black ballpoint pen part was based
19 not just on reviewing the documents but also on
20 reading the declaration of Dr. Aginsky from I
21 guess it was sometime in mid 2011 that that
22 declaration was dated, but prior to July 14th.

23 So based on Dr. Aginsky's description
24 of the writing as being black ballpoint ink and
25 based on the images I had seen, I had expected to

1 Tytell

2 see black ballpoint ink. And when the document
3 was presented, it was immediately obvious that the
4 ink was not black.

5 So that raised a whole new set of
6 issues about whether or not this was actually the
7 same document that had been viewed and scanned by
8 Mr. Osborn and Dr. Aginsky, did this agree with
9 the document -- with the images that had been
10 filed, with the initial paperwork -- "paperwork" I
11 guess is a wrong phrase for filing, but I hope
12 you'll understand what I'm talking about, the
13 moving papers, the first papers in the case from
14 mid 2010.

15 And that whole issue then opened up as
16 soon as I saw the ink as to what had happened to
17 the document in that -- prior to its showing up in
18 Buffalo on the morning I guess about 9 -- a little
19 bit after 9 a.m. on the morning of July 14th. So
20 that's when things changed for me very much so.

21 Q. And what tasks did you then decide you
22 had to perform that were different than before?

23 A. Could you repeat that again? I think I
24 lost the second word there after "what."

25 Q. Yeah, what tasks did you then decide

1 Tytell

2 you needed to perform that you before that didn't
3 think you were going to have to do?

4 A. Okay. I have tasks, T-A-S-K-S, what
5 tasks?

6 Q. Yes.

7 A. Okay. I don't mean to repeat it; I'm
8 just trying to make sure we got -- we understand
9 what's going on here.

10 Okay. What tasks did I then add? I
11 then inquired about getting earlier images of the
12 document for comparison with the actual document
13 that was present. I tried to figure out why the
14 ink looked like this, could it have looked like
15 this previously when the document was scanned for
16 the images that were filed with the moving papers
17 in mid 2010.

18 And then the additional tasks at that
19 stage -- we're now -- we haven't gotten even till
20 9:30 in the morning of July 14th in terms of
21 additional tasks -- would be of course the
22 documentation of this very unusual appearance of
23 the ink, to document it.

24 The scanning of the document that
25 morning was not really an additional task; that

1 Tytell

2 was a routine task. But subsequently I understood
3 that documentation of the ink in particular would
4 be useful.

5 Q. And what was your opinion of the
6 condition of the document other than the ink?

7 A. Well, that would bring us to about --
8 well, almost two hours later, around 11 in the
9 morning, when I first examined the document with
10 ultraviolet illumination and saw that the paper
11 had a very strange reaction under ultraviolet
12 illumination; that the front of the page was dark,
13 nonfluorescing, absorbing under ultraviolet,
14 pretty much uniformly on both pages; and that the
15 reverse, the nontext side of the page, was by
16 contrast brightly fluorescent, which is a normal
17 reaction for most of the paper that you use in
18 copy machines and laser printers and so on; but
19 that this very unusual front dark reverse brightly
20 fluorescing reaction, that sort of added another
21 task.

22 Plus within that overall unusual
23 reaction, on the front of both pages there were
24 little rectangles at the top of each page, two
25 rectangles at the top of each page, which were not

1 Tytell

2 dark like the rest of the face of the page but
3 were brightly fluorescing as the back of the page;
4 and that also on the reverse of page 1 in the
5 corner -- the corner with -- well, on the front it
6 would be the top left corner. When you turn the
7 page over, of course, that becomes the top right
8 corner. That that corner, which was folded over
9 and had a crease that created a triangle there in
10 that corner, that on the reverse of the page that
11 corner was dark, like the front of the page, and
12 not fluorescent.

13 So those issues all just popped up at
14 that point.

15 Associated with these light and dark
16 front/back tabs triangle on the back was also an
17 overall I guess ivory- or cream-colored cast to
18 the paper on the front, except for the tabs, as
19 opposed to white on the back, just a contrast in
20 the shade of the page. But that was all
21 coterminous with this very unusual reaction under
22 ultraviolet.

23 So that observation, those facts,
24 presented another set of issues that had to be
25 documented, further examined, during the course of

1 Tytell

2 the time in Buffalo.

3 Q. And you were present when Mr. Lesnevich
4 arrived on July 15th?

5 A. Present where?

6 Q. At the Buffalo analysis in the offices
7 of Harris Beach.

8 A. Yes, I was there that morning when
9 Mr. Lesnevich was present.

10 Q. Did you observe him scanning the "work
11 for hire" document or otherwise making images of
12 it?

13 A. I know that the document was scanned by
14 Mr. Lesnevich and his associate. I'm not sure
15 which one of them actually was driving the
16 machine, if you will, was operating the scanner.

17 Q. Have you ever seen Mr. Lesnevich's scan
18 of the "work for hire" document that he took on
19 July 15th, 2011?

20 MR. SOUTHWELL: Objection to the form.
21 Do you mean the actual like electronic scan?

22 MR. BOLAND: Yes, I'm asking Mr. Tytell
23 if he's ever seen what we would call the
24 native format electronic image, whatever you
25 want to call it, of the scan that

1 Tytell

2 Mr. Lesnevich took of the "work for hire"
3 document on July 15th.

4 A. I don't recall seeing that, no. I may
5 have. I don't know.

6 Q. Have you reviewed any papers that the
7 plaintiff has filed in this case which included
8 exhibits of your scan on July 14th compared to
9 Lesnevich's scan on July 15th?

10 A. I can actually hear you very clear; I
11 just don't understand you.

12 Q. Okay.

13 Have you reviewed a pleading in this
14 case that the plaintiffs filed which included an
15 exhibit showing your scan of the "work for hire"
16 document on July 14th side by side with
17 Mr. Lesnevich's scan of the same document on July
18 15th? Have you seen that pleading and that
19 exhibit?

20 A. Well, when -- I'm sorry, when you say
21 "pleading," I'm looking at my -- what's been
22 marked as Tytell 1 for today, which says -- has a
23 whole cover page that says Exhibit F. I assume
24 that there was an Exhibit A, B, C, D, and E. And
25 other than those five exhibits, there may have

1 Tytell

2 been another string of exhibits beginning with G
3 going to the end of the alphabet and beyond.

4 So I really don't know -- and then
5 there was I guess it would be called a pleading
6 that was the thing to which all of these exhibits
7 were attached.

8 So if you mean have I read the lawyers'
9 arguments in the form of the pleading to which my
10 report was attached, then the answer would be no,
11 I haven't read that pleading.

12 Q. No, my question is have you read a
13 document the plaintiffs have filed which included
14 an exhibit comparing what your scan of the "work
15 for hire" document looked like on July 14th to
16 Lesnevich's scan of the same document a day later.

17 Have you seen that exhibit where we
18 compare them?

19 A. This was filed by whom? The plaintiff
20 or --

21 Q. Filed by the plaintiff. Have you seen
22 that exhibit?

23 A. Oh, the plaintiff. I'm sorry, back up
24 for a minute. I had defendants and plaintiffs
25 confused. I know that seems weird, but you have

1 Tytell

2 to remember document examiners are not like
3 advocates, such as yourself and the wonderful
4 attorneys sitting here in this room, and that we
5 tend to be advocates for the documents rather than
6 the parties.

7 So maybe if I could look at the
8 document to which you refer that would make it
9 easier for me to give you a good answer, a correct
10 answer.

11 Q. Well, just let me ask it this way: As
12 you sit here right now, do you recall seeing a
13 comparison, a visual comparison, of your scan of
14 the "work for hire" document on July 14th with
15 Mr. Lesnevich's on July 15th?

16 A. I -- I don't have anything in front of
17 me. If maybe you could give me or supply
18 Mr. Southwell with a document number, I'm sure
19 that the people at Gibson, Dunn have kept copies
20 of everything you filed. I'm sure that's the kind
21 of thing that lawyers do for each other's
22 paperwork.

23 Q. Yeah, that's fine. I'll take your
24 invitation there.

25 MR. BOLAND: Alex, if you could have

1 Tytell

2 someone just print a one-page document. It's
3 document number 263-2 that was filed in the
4 case. And I can go on with other questions
5 while that's happening.

6 MR. SOUTHWELL: All right. We'll do
7 that.

8 MR. BOLAND: Thank you.

9 Q. Mr. Tytell, did you originally think
10 when you were hired on this case that you might be
11 asked to provide handwriting analysis?

12 A. I didn't know.

13 Q. When you say "know," do you mean
14 K-N-O-W?

15 A. Correct, "know" with a K.

16 Q. Did you ever mention or discuss with
17 the defendants' counsel the possibility of
18 analyzing the handwriting on the "work for hire"
19 document?

20 A. We're now still discussing my original
21 retention in this matter?

22 Q. No, at any point in this case, have you
23 discussed with the defendants' lawyers the
24 possibility of analyzing the handwriting on the
25 "work for hire" document?

1 Tytell

2 A. I've made some comments about
3 handwriting.

4 Q. What were those comments -- well, no,
5 let me back up, because that might be something
6 that's work product that I shouldn't be asking
7 about. So let me rephrase the question.

8 MR. SOUTHWELL: Thank you. I was about
9 to object. Thank you.

10 MR. BOLAND: Yeah, that's fine.

11 Q. I'm not asking for the content, but
12 just to confirm the last question I asked, is it a
13 "yes, sir," that you have had conversations about
14 possibly analyzing the handwriting on the "work
15 for hire" document?

16 A. Well, I'm not sure -- what do you mean
17 by "the possibility of analyzing"?

18 Q. How would you describe what it is you
19 do in not this case but in previous cases when you
20 have examined handwriting both signatures or just
21 nonsignature handwriting and compared it to
22 samples from a person and tried to make some sort
23 of conclusion about whether -- who wrote some
24 handwriting on a document? What do you call that?
25 Is that called handwriting analysis or how would

1 Tytell

2 you describe it? What's your term?

3 A. Well, generally handwriting
4 examination. But no, I understand what you mean
5 by "handwriting analysis." I don't quite get the
6 context of what you're asking about.

7 Q. Well, the way I'm looking at it is
8 this: You have years and years, as you indicated,
9 of handwriting examination experience. Did that
10 topic ever come up in -- did you ever suggest to
11 the defendants' attorneys that you might analyze
12 the handwriting on this document, that might be
13 something helpful for them?

14 A. Okay, well, so, I want to repeat it to
15 make sure I'm getting this right. So did I ever
16 suggest that, hey, I could also submit or work on
17 the handwriting side of the matter? Is that what
18 you're asking about?

19 Q. Yes.

20 A. No, then, I'm not looking for an extra
21 task or an extra area in which to perform.

22 Q. Do you know if the defendants' lawyers
23 were aware that you had qualifications to analyze
24 or examine handwriting?

25 A. Well, I did submit my résumé to them.

1 Tytell

2 I cannot tell you whether or not they read it; but
3 if they had, I would have hoped they would have
4 garnered that kind of information about my
5 background.

6 Q. And when you saw the document on July
7 14th, you obviously noticed that along with the
8 typography, which you were going to analyze, that
9 the document had handwriting. You saw that?

10 A. Yes, indeed.

11 Q. Did you discuss with any of the other
12 experts, the defendants' experts, during that
13 examination over those several days the
14 handwriting on the document?

15 A. Other than the ink of the handwriting,
16 the actual letter formations, line quality,
17 et cetera, I don't recall making -- having any
18 conversations on that topic.

19 Q. Who did you discuss the letter quality
20 or the line quality and all that that you just
21 mentioned, who did you discuss that with? Which
22 experts?

23 A. I think I just said I did not discuss
24 that with defendants' counsel in -- on that -- in
25 July of 2011, July 14 and 15. I'm sorry, see,

1 Tytell

2 this is where technology is not serving us well.
3 The answer is no, I did not discuss these issues
4 with them at that time.

5 Q. Okay. And did you -- what I'm asking
6 is did you discuss with the other defendants'
7 experts during the time of the examination
8 anything about the handwriting.

9 A. I think the only things that we --
10 basically what we discussed was who gets the piece
11 of paper. That was most of the conversations.
12 And the issues that were discussed I do not
13 believe involved the kinds of topics and
14 characteristics that one focuses on in doing the
15 kind of handwriting examination that I believe
16 you're referring to, topics such as line quality,
17 formation, et cetera.

18 So I don't think those topics were
19 included in the conversations that I might have
20 had during that time frame.

21 Q. And did you discuss with any of the
22 defendants' experts whether it would be a good
23 idea or whether it could be helpful to your -- to
24 the analysis of the document to have someone
25 analyze or examine the handwriting?

1 Tytell

2 A. Did I discuss that -- again, I want to
3 repeat because of what I heard. Did I discuss
4 that with the other defendants' experts at that
5 time? That's the question I heard; right?

6 Q. Yes.

7 A. Okay. No.

8 Q. Did you discuss that with the
9 defendants' experts at any time?

10 A. Well -- whether or not it would be a
11 good idea to have somebody look at the
12 handwriting?

13 Q. Yes.

14 A. Okay. No, that's I think something
15 that was, as they say, overtaken by events because
16 there was some examination of the handwriting, I
17 believe.

18 Q. And who do you believe examined -- did
19 some of the examination of the handwriting?

20 A. Mr. Lesnevich.

21 Q. Did that examination include trying to
22 determine if the signature on page 2, which
23 appears to be Mark Zuckerberg, is in fact Mark
24 Zuckerberg? Is that part of the examination
25 you're referring to?

1 Tytell

2 A. That appears on page 2 of which
3 document?

4 Q. The "work for hire" document.

5 A. Which "work for hire" document?

6 Q. The one you examined on July 14th and
7 the days thereafter, the few days in Buffalo.

8 A. I believe that Mr. Lesnevich's
9 examination addresses exactly that issue.

10 Q. Did you examine more than one document
11 that you would call the "work for hire" document?

12 A. Yes.

13 Q. When did you -- okay. So one of them
14 you examined starting on July 14th; correct?

15 A. Correct.

16 Q. When did you examine a second "work for
17 hire" document?

18 A. Well, this is kind of like the line
19 from scripture: The first shall be last, and the
20 last shall be first. The second document was the
21 first document.

22 Q. Can you explain that? I'm confused by
23 your answer. What do you mean, "the second
24 document was the first"?

25 A. I'm sorry, there are two documents

1 Tytell

2 I've -- two documents that have "work for hire" in
3 quotes and "contract" on the top of the page. One
4 of these I have seen only in electronic form,
5 which is the document or the exhibit, I guess it
6 would have been, that was attached to the moving
7 papers from -- filed by plaintiff -- I guess
8 plaintiff always files the original moving
9 papers -- filed by plaintiff in mid 2010.

10 And I understand that there's also an
11 electronic scan, two pages, I believe two TIFF,
12 T-I-F, files that are color files that I have been
13 informed were e-mailed by a Mr. Paul Ceglia. I
14 think that's C-E-G-L-I-A -- to Mr. Paul
15 Argentieri, A-R-G-E-N-T-I-E-R-I. I hope that's
16 the correct spelling of his name.

17 So the document or the images that were
18 e-mailed by Mr. Ceglia to Mr. Argentieri and the
19 copy that was -- or exhibit that was appended to
20 the moving papers, that was the first -- well, the
21 copy appended to the moving papers from mid 2010
22 was the first copy of the "work for hire"
23 document, the first images, that I examined. And
24 that seems to tie into the color scan from
25 Mr. Ceglia to Mr. Argentieri. So I would consider

1 Tytell

2 that one "work for hire" document.

3 Then I also examined the document in
4 Buffalo in July of 2011, and I would consider that
5 to be another "work for hire" document.

6 Q. All right. So for the ease of us
7 understanding what we're talking about, I'm going
8 to refer to the document that you examined
9 starting July 14th as the paper contract, because
10 that was two pieces of actual physical paper that
11 you analyzed starting July 14th; correct?

12 A. Right.

13 Q. And the other two documents you
14 referred to, the attachment to an e-mail regarding
15 Mr. Argentieri and the document that was attached
16 to the complaint --

17 A. "Complaint" is the word I was looking
18 for. Thank you.

19 Q. Yes, well, let me back up with that
20 question.

21 The document attached to the complaint,
22 you're not -- I don't think you have any dispute
23 that's a photocopy. No one's arguing that's an
24 original document itself that a party signed. You
25 agree with me on that?

1 Tytell

2 A. Let's back up again. It's a
3 photocopy -- well, I don't know if it's a
4 photocopy. I've only seen it as one electronic
5 form or another. I don't know if it's actually
6 been through a photocopy machine.

7 Sadly or interestingly, the term
8 "photocopy" as become to seem quaint. It's moving
9 up there with "carbon copy." So I know that --

10 Q. (Inaudible.)

11 A. I'm sorry, please.

12 Q. I guess I'll try it again. An actual
13 physical paper document purporting to be an
14 original document, there's only one of those that
15 you examined, and that was on July 14th?

16 A. Right, the Buffalo -- the Buffalo "work
17 for hire" contract, the two physical pieces of
18 paper with the faded ink that Mr. Argentieri
19 brought out of a U.S. Postal Service express mail
20 envelope just after 9 in the morning on July 14th.
21 We actually have two physical objects to discuss
22 there. That's great.

23 Q. The TIFF images are digital images;
24 correct?

25 A. Correct.

1 Tytell

2 Q. Have you ever been qualified as an
3 expert in the analysis of digital images?

4 A. I've -- let's see. I have provided
5 expertise based upon examination of digital
6 images.

7 Q. Have you ever been qualified to answer
8 the question about a digital image whether it has
9 been -- the digital image itself has been altered
10 or not in a program like Photoshop or something
11 similar to that?

12 A. No.

13 Q. Do you feel that you are qualified to
14 visually examine a digital image and tell whether
15 it has been altered in a program like Photoshop or
16 something similar?

17 A. Within the limitations that would apply
18 to any field of expertise that I might claim to
19 have, I would go as far as I felt comfortable
20 going. That would be true of my expertise in
21 handwriting that you've referred to in the past or
22 typography. I do not pretend to be omniscient in
23 any field that I am actually knowledgeable in.

24 Q. As to the TIFF images that you referred
25 to earlier, in your examination of those, were you

1 Tytell

2 able to determine if those were original images or
3 copies of otherwise original digital images?

4 A. Well, I did receive -- actually I think
5 it was probably one of the very first images of
6 any document that I received in relation to this
7 matter. And I asked about the document, and I was
8 informed that I had received the PDF file that had
9 been filed with the complaint -- thank you for
10 that word -- that had been filed with the
11 complaint as it was received by Gibson, Dunn. So
12 I have seen that -- what has been represented to
13 me as being that particular document -- that
14 particular electronic file.

15 As to the -- now, that PDF file -- A,
16 it's a PDF file; B, it's black and white -- I then
17 saw -- it's black and white what would be called 2
18 bit, the kind of -- the depth of it. It's just
19 black and just white, not gray, not color.

20 I then have also received these TIFF
21 files, which I have been informed were provided on
22 discovery by Mr. Argentieri. So I have received
23 what I understand to be -- I have received the
24 files.

25 And when electronic files are moved

1 Tytell

2 from one computer to another, it is considered
3 that you are -- no matter how many times that is
4 copied by moving it from one file to another,
5 that's still the original file, barring some
6 glitch in the electronics, such as happened with
7 your voice earlier today.

8 So I have these two TIFF files, which I
9 have been informed are duplicate original files of
10 the files provided by Mr. Argentieri to
11 defendants' counsel. Now, what happened prior to
12 Mr. Argentieri turning that file over, I have no
13 way of knowing, and I can only accept the
14 representation that the file provided by
15 Argentieri is the file forwarded to me by Gibson,
16 Dunn.

17 So to that extent I am looking at what
18 I have been told is an original file, it is in
19 color, 24-bit color, but I don't know if that
20 reputation is accurate. I don't know if what was
21 provided by Mr. Argentieri is indeed what he
22 received.

23 Q. All right. Let me just ask you a
24 hypothetical about TIFFs as digital images. Do
25 you feel qualified to GIF an opinion if you were

1 Tytell

2 given -- I hired you as an expert in a case and I
3 said, Look, Mr. Tytell, here are two TIFF images
4 which purport to be the pages of a document that
5 were scanned in and I want you to look at the TIFF
6 images and tell me if these TIFF images are
7 original -- the original digital image scans of
8 this document or have they somehow been altered
9 before they were created into the TIFF format that
10 I just gave you; not the document itself but was
11 the digital image of the scan somehow altered in
12 Photoshop to make it look different.

13 Would you be qualified to determine
14 what that alteration was to the digital image?

15 A. I -- based upon my knowledge of how
16 these things work, I would attempt to aid you, to
17 the extent that I could. I might try to look at
18 the readily available properties of the file,
19 creation dates, so on and so forth. I'm not sure
20 that I could actually crack into the metadata -- I
21 know those who can -- on a TIFF file.

22 I have done exactly what you described
23 on PDF files that were archived for documents
24 scanned and transmitted some years prior to the
25 dispute arising. But you're asking about TIFF

1 Tytell

2 files, not PDF files.

3 So I have some experience with getting
4 into the metadata of the PDF files. And just a
5 very simple explanation of the readily available
6 data can sometimes provide information that could
7 resolve the kind of issue that you have raised in
8 your hypothetical.

9 So hypothetically if somebody such as
10 yourself were to approach me on that, I would say
11 I can look at it, but there are certainly plenty
12 of people around who are much more specialized and
13 much more highly qualified than I to perform that
14 kind of an analysis.

15 Q. What if I gave you two TIFF images that
16 appear to be, you know, images of some landscape,
17 the Rocky Mountains, for example, and I asked you
18 to tell me if visually you could examine those
19 images and tell me if anything has been altered in
20 that apparent landscape -- rocks moved around,
21 trees added or removed -- do you have any
22 qualifications to do that kind of analysis?

23 A. Well, you're using the word "TIFF,"
24 which brings us into the twenty-first century and
25 the world of electronics, et cetera, which gives

1 Tytell

2 you some added clues.

3 But the kind of problem, the kind of
4 photo manipulation, that you're describing
5 hardly -- is a problem that is hardly new and is
6 hardly something exclusive to TIFFs. This is a
7 class or category of examination that has been
8 performed for many, many years regarding
9 photographs that have been altered and manipulated
10 and photo montage.

11 Now you're talking about a landscape, a
12 snapshot, and that actually might come into play
13 in some kinds of cases where somebody is
14 presenting -- you know, I couldn't have done the
15 measured in New Jersey. Here, look at me, this is
16 the day I was at, I don't know, someplace in the
17 Rocky Mountains. My Rocky Mountain geography is
18 very limited but -- just -- Vail, is Vail in the
19 Rocky Mountains somewhere? I was skiing in Vail.
20 Here you can see I was on the ski slopes. It just
21 happens somebody is holding up a newspaper next to
22 me giving the date. So I couldn't possibly have
23 been in New Jersey doing the evil deed.

24 That's the kind of manipulation that
25 was done in the dark room with photographs or with

1 Tytell

2 a scissors and a photocopier. And there are a
3 number of things that you look at to try and find
4 those manipulations. And I have had a certain
5 amount of training in that kind of examination.
6 And nowadays it just involves pixels, and there
7 are things with the pixels you can look at in
8 programs like Photoshop that might help you do
9 that.

10 This is all very interesting as a
11 hypothetical discussion, both in the twenty-first
12 century and probably going back to the nineteenth
13 century, but in this particular case it's not
14 really that relevant to what I did or what use
15 those TIFF files were put to.

16 Q. All right. At any point did you
17 request of the defendants' attorneys to get
18 samples of Defendant Zuckerberg's handwriting to
19 do some kind of a comparison to the handwriting on
20 the paper contract you evaluated on July 14th?

21 A. No.

22 Q. And why not?

23 A. Well, several reasons.

24 Q. Are you still there, Mr. Tytell?

25 A. Yes, I'm sorry, I'm still here.

1 Tytell

2 Q. What are those reasons why you did not
3 seek the handwriting samples of Mr. Zuckerberg?

4 A. Well, reason one would be that I was
5 not tasked -- excuse me one moment. It's a foggy,
6 humid day in New York, and it's getting to my
7 throat.

8 I was not tasked with an examination of
9 handwriting or signatures specifically. Number
10 two, although I was not tasked with this
11 examination, after reading the reports of
12 Messrs. Blanco and Stewart, I did become
13 interested in several aspects of what they had
14 discussed and did start taking a look at the
15 writing on page 1 and on page 2 of the I guess
16 we'll call it the Buffalo document or the paper
17 document.

18 Q. Yes.

19 A. Fine, the paper document. And I looked
20 at both the images of the paper document that I
21 myself had captured and also at the images of the
22 paper document that Mr. Osborn and Dr. Aginsky had
23 captured.

24 And in looking at page 2 of the paper
25 document, my curiosity was aroused by the complete

1 Tytell

2 lack of mention of the fact that there was a
3 signature on that second page of somebody named
4 Paul Ceglia.

5 And I had actually seen one other Paul
6 Ceglia signature in Buffalo on July 14th, and that
7 Paul Ceglia signature was on a document -- I
8 believe it's a six-page document with a
9 handwritten notation on page 4 that's initialed
10 and also a signature of Mr. Ceglia or that's
11 supposed to be Mr. Ceglia's signature and a
12 signature of apparently Mr. Zuckerberg also, as
13 well as some dates, that appear on page 6 of that
14 six-page document that is called -- I think we've
15 been calling it the specification document.

16 Do you understand what I'm talking
17 about, a six-page specification document?

18 Q. Yes.

19 A. Okay. I mean, I don't remember what
20 the wording is at the very top of the page. Well,
21 I know it -- actually, that's in my report that's
22 Tytell 1, so let me just get that. A six-page
23 document headed "StreetFax back-end technical
24 specification" dated April 28, 2003. Okay.

25 So that six-page document bears the

1 Tytell

2 exact same date, April 28, 2003, as the "work for
3 hire" document, and both documents have Paul
4 Ceglia signatures.

5 So I was interested in why nobody --
6 why neither Mr. Stewart nor Mr. Blanco seemed to
7 notice that there was a Paul Ceglia signature on
8 page 2. Now, I know Mr. Blanco did collect
9 samples of the handwriting of Mr. Ceglia. That
10 was one of his exhibits something like Exhibit 21
11 or 22, someplace in there. So Mr. Blanco had
12 collected samples of Mr. Ceglia's writing. But --
13 excuse me -- yeah, Mr. Ceglia's writing.

14 And unlike the way that samples are
15 often collected by document examiners, Mr. Ceglia,
16 or whoever wrote those samples, did not sign or
17 initial any of the -- I think there were 43
18 separate pages there. That's just a recollection.
19 Don't hold me to it.

20 But usually when you collect exemplars
21 from somebody, someplace on those exemplars you're
22 going to get: ask them to please sign it, please
23 initial it. I know that's the standard practice
24 on the forms that many government agencies use,
25 such as the ATF, Alcohol, Tobacco, Firearms agency

1 Tytell

2 where Mr. Blanco used to work. I know they have
3 that on their forms.

4 Anyway, although Mr. Blanco did try to
5 determine whether or not Mr. Ceglia had written
6 the interlineation, we've been calling it, the
7 words on page 1, and collected samples for that
8 specific purpose, he didn't collect any samples of
9 Mr. Ceglia's initials to compare to the PC
10 initials on page 1, nor did he apparently collect
11 any signatures of Mr. Ceglia to compare to the
12 signature on page 2, nor any numerals and writing
13 of dates to compare to the 4/28/03 date that
14 appears on page 2 of the "work for hire" document.

15 So the absence of any pursuit of that
16 issue was kind of interesting. If you accept that
17 Mr. Ceglia just signed the document and of course
18 he signed it, okay, well, then you could also
19 accept that Mr. Ceglia just wrote the
20 interlineation, if he has made that statement.

21 But if you're going to bother to look
22 at one page to see if Mr. Ceglia actually wrote
23 something, I would suggest it might be consistent,
24 if nothing else, to look at the second page.

25 So I was just interested. And I looked

1 Tytell

2 at the second page of the "work for hire" paper
3 document from Buffalo as it had been imaged by
4 Dr. Aginsky and Mr. Osborn. And I looked at the
5 images that I had made of the papers that showed
6 up in July.

7 And I compared those just to the other
8 signature of Mr. Ceglia that bore the exact same
9 date. So it would be very contemporaneous. It's
10 the same day. The two documents seem to be linked
11 in terms of the fact that they both show up
12 related to this case and to some work that one
13 person --

14 MR. SOUTHWELL: Let's go off the
15 record, please.

16 (Pause - telephone connection lost.)

17 MR. BOLAND: Mr. Tytell was in the
18 midst of describing his analysis of
19 Mr. Ceglia's signature on the "work for hire"
20 paper document with the software specification
21 agreement, is I believe what he was describing
22 when it disconnected.

23 MR. SOUTHWELL: Right. Okay. So
24 please proceed.

25 A. Yeah, the technology is not being easy

1 Tytell

2 with us.

3 So I was very curious about this, and I
4 compared the images from Mr. Osborn, who had also
5 seen the specification document and had also
6 captured images of the writing and initials on
7 page 4 and the signatures on page 6 of the
8 specification document, as well as the writing and
9 signatures on the two pages of the "work for hire"
10 document and also the images of the "work for
11 hire" document captured by Dr. Aginsky as well as
12 the images that I had captured of the "work for
13 hire" document pages 1 and 2 and the specification
14 document, specifically page 6, the signature of
15 Mr. Ceglia.

16 The signature of Mr. Ceglia on page 6
17 of the specification document is -- I guess I
18 would compliment Mr. Ceglia on the speed and line
19 quality of his signature: very nice line quality,
20 rapidly, smoothly written, nice pressure
21 variation, long tailing terminal strokes that --
22 as they leave the page.

23 Now, I don't want to burden the record
24 unnecessarily, but I hope that you're familiar
25 with the term "line quality," Mr. Boland.

1 Tytell

2 Q. Yeah.

3 A. So you know that line quality is kind
4 of the nonplus ultra of signatures, that this is
5 the thing that you look for, and this is the
6 giveaway, the place where a careful drawn free-
7 hand simulation of a signature will fall down is
8 in the line quality.

9 This is the problem that trips up
10 people who are doing a very, very careful and
11 precise and accurate tracing of a signature is
12 that they may get all of the forms right but what
13 they're going to have extreme difficulty with is
14 the line quality.

15 So looking at Mr. Ceglia's signature on
16 page 6 of the specification document, it is clear
17 that Mr. Ceglia has very good line quality, the
18 kind of line quality that is just going to play
19 hob with an attempt at simulation or tracing.

20 Then looking at the line quality of the
21 Paul Ceglia signature on page 2 of the paper "work
22 for hire" document as imaged by Dr. Aginsky,
23 Mr. Osborn, myself, that line quality is at
24 virtually the opposite end of the scale from the
25 signature of Mr. Ceglia on the sixth page of the

1 Tytell

2 specification document.

3 That line quality is very poor, shaky.
4 And when you get over to the date next to it and,
5 for instance, those very long, straight diagonals
6 or what are supposed to be straight diagonals that
7 separate the month, day, and year of the date,
8 those have very poor line quality compared to the
9 same formations, the separators between the month,
10 day, and year in the date next to Mr. Ceglia's
11 signature on page 6 of the "work for hire"
12 document.

13 So this is just a contrast night and
14 day, a contrast actually almost as great as the
15 contrast between the fluorescent properties of the
16 front and reverse pages of the "work for hire"
17 document.

18 You just look at that kind of line
19 quality that is seen on page 2 of the "work for
20 hire" document and you say, unless there's a
21 really good explanation for somebody who shows
22 this fine, smooth, rapid writing with good line
23 quality as another document dated the same day,
24 the specification document, unless there's some
25 explanation for that person suddenly not being

1 Tytell

2 able to write properly and yet very writing very
3 precisely, albeit very slowly, I wouldn't even say
4 a snail's pace -- a snail would lap you if you
5 were writing that slowly -- that you have a clear
6 flag, to a document examiner who looks at that,
7 that something is severely wrong here, that the
8 first thing that pops into the mind of somebody
9 who's been examining signatures for a long time is
10 this is a careful simulation or this is a careful
11 tracing.

12 Now, the way you can usually be able to
13 tell the difference between a simulation and a
14 tracing, where you have such terrible line
15 quality, is if by some happenstance you run across
16 the model or another tracing made from the same
17 model.

18 As I'm sure you're aware, having been
19 involved in this case for a while and I'm sure
20 you've studied up on the textbooks supplied to
21 you, that people just don't sign their name
22 exactly the same way twice.

23 We are not printing presses; we are not
24 copy machines; we have variation. And I believe
25 variation was something discussed by either

1 Tytell

2 Mr. Blanco or Mr. Stewart. So that is true, we
3 have variation.

4 And when you find something that -- two
5 signatures that have a similarity that exceeds the
6 normal similarity of somebody signing their name
7 twice that lacks the level of variation that would
8 be expected comparing two naturally and freely
9 written signatures, that you are looking at
10 something that either is the model for that
11 tracing or another tracing made from the same
12 model.

13 And in comparing the Ceglia signature
14 on page 2 of the paper copy with the Ceglia
15 signature on page 6 -- excuse me, let me start.

16 When comparing page 2 -- the page 2
17 signature of Paul Ceglia on the paper copy as
18 imaged by Dr. Aginsky, for instance, with the page
19 2 Paul Ceglia signature from the scan provided by
20 Mr. Argentieri, the TIFF file, scanned apparently
21 by -- or I've been informed by Mr. Ceglia himself
22 and then sent to Mr. Argentieri as an e-mail
23 attachment, when you compare that Paul Ceglia
24 signature with the Paul Ceglia signature from page
25 2 of the paper copy of the "work for hire"

1 Tytell

2 document, they are almost identical. There is
3 almost no variation.

4 However, there is variation. There are
5 differences. And the quality, the quantity, the
6 direction in terms of left and right, up and down
7 on the page as well as skew, if you will, the
8 angle relative to 90 degrees or baseline.

9 So the quality, quantity, size,
10 direction, rotation of the differences are not the
11 kind of differences that one would associate with
12 differences caused by scanning. They are, rather,
13 the kinds of differences in quality and quantity
14 that are typically found when comparing a tracing
15 to its model or to another tracing made from the
16 same model.

17 Having seen -- well, "clear and
18 convincing" is a legal term, but basically
19 essentially overwhelming evidence that the
20 signature on page 2 of the paper copy -- the Paul
21 Ceglia signature on page 2 of the paper copy is a
22 tracing, it then -- and also the date next to the
23 Paul Ceglia signature, I then also looked at the
24 date next to the Mark Zuckerberg signature on page
25 2 of the paper copy in its various scanned images

1 Tytell

2 and so on and compared that to the date next to
3 Mark Zuckerberg's signature on page 2 of the -- I
4 guess I'll call the mid 2010 images, both the PDF
5 from the complaint and the Ceglia to Argentieri
6 e-mail TIFF files, and found there a number of
7 differences; and similarly with the Zuckerberg
8 signature on page 2, a number of differences
9 qualitatively and quantitatively similar.

10 Now, Mark Zuckerberg's signature as
11 seen on page 6 of the specification document is --
12 well, it's no offense to Mr. Zuckerberg, but it's
13 not nearly as pretty as Mr. Ceglia's signature.
14 Mr. Ceglia has a more developed signature style
15 than Mr. Zuckerberg, more skillfully executed,
16 let's say, more quickly executed, apparently.

17 However, Mr. Zuckerberg's signature on
18 page 6 of the "work for hire" document has better
19 line quality in terms of, let's say, the last
20 stroke at the end of the second name, than does
21 the signature on page 2 of the paper copy of the
22 "work for hire" document.

23 And since Mr. Ceglia's signature is --
24 has gross characteristics of a tracing, the idea
25 that Mr. Zuckerberg's signature is a tracing seems

1 Tytell

2 extremely plausible.

3 I also compared, just because I was in
4 it at that point, the initials and the
5 interlineation printing on page 1 of the paper
6 copy with the interlineation and initials on page
7 1 of the electronic images from mid 2010 and again
8 found just many, many differences in detail that
9 were not compatible with being caused by a
10 difference in scanning.

11 So that was actually a handwriting
12 examination, I guess, a handwriting and signature
13 and numeral comparison that I did although I was
14 not actually tasked with doing it.

15 Q. How did you come to do that analysis?
16 Was that on your own you decided to embark on
17 that?

18 A. Well, it grew out of my reading of
19 Mr. Stewart's declaration and Mr. Blanco's
20 declaration. They had a number of comments
21 concerning some kind of an analysis that
22 Mr. Lesnevich had done.

23 And I was just sort of interested
24 because they were making -- I mean, this is really
25 thirdhand. This is I'm looking at what Mr. Blanco

1 Tytell

2 says about what Mr. Lesnevich says about some
3 handwriting.

4 Everything in this discussion was all
5 about page 1, and I'm saying, Well, this is all
6 very interesting. There's a critique -- a
7 criticism of Mr. Lesnevich that his illustrations
8 appear to be made from a printout.

9 And there was discussion of the yellow
10 security dots that appear on the output of color
11 copiers and color printers, and therefore we know
12 that this was done using a printout rather than
13 the original electronic file.

14 And I said, Well, okay, that's all very
15 nice as a discussion. I'm not going to bother
16 with any color printouts. I have access to the
17 original electronic files. I will use them. And
18 those are what I used.

19 Also, as I said, everybody was talking
20 about page 1, and I'm wondering what happened to
21 page 2. The only discussions of page 2 are -- or
22 the handwriting on page 2 are Mr. Blanco talking
23 about the Mark Zuckerberg signature, not talking
24 at all about the date next to the Mark Zuckerberg
25 signature, and not even mentioning that Paul

1 Tytell

2 Ceglia was in any way involved with anything on
3 the second page.

4 So my curiosity was piqued, and I
5 looked. And what I found was quite interesting, I
6 felt.

7 Q. Have you provided a report to the
8 defendants regarding those findings?

9 A. No.

10 Q. Have you communicated those findings to
11 them verbally?

12 A. Yes.

13 Q. When was that conversation?

14 A. Well, it would be more than one
15 conversation.

16 Q. When did you first communicate this to
17 them?

18 A. After seeing the -- well, obviously
19 after reading the early June reports of
20 Messrs. Blanco and Stewart. So I'm trying to
21 remember, I think those came in around the first
22 week of June -- is that correct, sir? -- the date
23 on Mr. Blanco's declaration? Is that like
24 around --

25 Q. There were declarations filed June 4th

1 Tytell

2 by Mr. Blanco and Mr. Stewart. They had filed
3 previous declarations, but the June 4th one I
4 think is the one where Mr. Blanco -- well, he
5 talked about the handwriting in two different
6 declarations, one of which was June 4th, the most
7 recent.

8 A. Okay, so --

9 Q. That's the one that --

10 A. Yes, sorry?

11 Q. Is that the one you read, June 4th,
12 that prompted you to do this analysis?

13 A. Yes, Mr. Blanco and Mr. Stewart's
14 declarations, both. I reviewed them -- let's say
15 they're dated June 4th. I don't know when I
16 actually received them, a couple of days later at
17 the most. And then I started reading them.

18 I'm pretty -- I will acknowledge people
19 have told me that I tend to be a bit wordy, but I
20 was impressed with their declarations and the
21 detail that they went into. I think one was 90
22 pages and the other was 99.

23 And so it took me a while to go through
24 them and to consider each of the various issues
25 that they addressed, but, you know, given a number

1 Tytell

2 of days, a week or two or something thereafter,
3 when I finally got into this.

4 So I can't give you an exact date, but
5 it would be sometime in the weeks between, say,
6 the second week of June and today that I've had
7 these discussions. I don't really recall when the
8 first one was.

9 Q. Have you been asked to provide a report
10 on these results?

11 A. No, I have not been asked to provide a
12 report.

13 Q. And let's talk about what was a pretty
14 detailed answer to my question, which I
15 appreciate, and is it your conclusion, then, from
16 that analysis that the signature on page 2 of the
17 paper contract, the "work for hire" contract that
18 you analyzed, is actually not an original -- I'm
19 talking about Paul Ceglia's signature -- is not an
20 original signature but a tracing of his signature?
21 Is that your position?

22 A. Well, when you say "original
23 signature," I'm going to ask you to sort of be a
24 little more specific about that term, because
25 that's kind of a -- you're getting into my

1 Tytell

2 term-of-art department.

3 Q. Well, tell me how you would describe a
4 signature that is authentic, that you determined
5 after you looked at it the person actually wrote
6 their signature, good line quality, et cetera, it
7 wasn't a tracing. What would you call it? What
8 is your term?

9 A. Okay, thank you. I would describe that
10 as a freely, naturally written signature by the
11 writer of the knowns, in that case the knowns
12 being the Paul Ceglias of the knowns. We're
13 discussing his signature.

14 Q. Did you have access to any of Paul
15 Ceglia's knowns other than that signature on the
16 specification agreement?

17 A. That was the only original ink
18 signature that I had access to.

19 Q. Did you have access to any photocopies
20 of his signature?

21 A. I had --

22 Q. Or copies --

23 A. I'm sorry, please.

24 Q. I didn't mean to use the word
25 "photocopy" necessarily as a restrictive.

1 Tytell

2 Did you have access to any other
3 examples of his signature?

4 A. I guess in the twenty-first century we
5 should just say images, whether they're produced
6 on a copy machine, a scanner, or whatever.

7 Yes, I did have access to some images
8 of Mr. Ceglia's signatures that appeared on
9 documents that had been filed in this case that
10 were part of the -- I don't know if it's the
11 record, the filings, the documents that have
12 numbers at the top, like Tytell 1 has a document
13 number 330 at the top.

14 Q. Is it your opinion, then, to use your
15 terminology, that the signature on -- Paul
16 Ceglia's signature on page 2 of the paper contract
17 that you analyzed July 14th, starting July 14th,
18 is not a freely written, natural signature; it's a
19 tracing? Is that your conclusion?

20 A. Well, it's -- that's two different
21 things that you're asking about. Number one, it
22 is not a freely and naturally written signature.
23 That is, I think, self-evident. We've just passed
24 the 4th of July and Declaration of Independence.

25 I think that is self-evident from the

1 Tytell

2 signature itself of -- even from the images that
3 were scanned or the photographic images taken by
4 either Mr. Osborn or Dr. Aginsky, or those that
5 were used, for instance, by Mr. Blanco in his
6 report.

7 The line quality is terrible. It's not
8 a freely and naturally written signature of the
9 kind typically -- or of the kind seen in the Paul
10 Ceglia signature on the specification document
11 written the same day. You use that as an example
12 of what Paul Ceglia signs like.

13 Sorry, that's a badly constructed
14 sentence.

15 But you know how he signs by looking at
16 his signatures, for instance, the original
17 signature dated the exact same day on page 6 of
18 the specification document, and you see a nice,
19 freely written signature, and the signature on
20 page 2 of the "work for hire" paper document does
21 not conform to that. It is not that kind of a
22 freely written, natural signature.

23 It is -- now, to the second part of the
24 question, it is a signature on page 2 of the "work
25 for hire" document, that line quality, that slow-

1 Tytell

2 drawn appearance, is a hallmark of simulated
3 writing. It is a hallmark of a slow-drawn line
4 quality, typically of carefully copied signatures,
5 be they simulations looking at something next to
6 where you are or tracings.

7 The reason that it moves to being a
8 tracing is the conformity of that signature, the
9 level of conformity, although it is not total
10 precise conformity, such as one would see in a
11 photocopy transfer or a scanned cut-and-paste
12 transfer.

13 But the level of conformity with the
14 signature on the images from mid 2010 is such that
15 it would be considered a tracing. As to who
16 traced it, that is something that you usually are
17 unable to tell. I can't tell if it was traced by
18 the man in the moon, John Doe, Paul Ceglia
19 himself, anybody else.

20 Q. Did you do a similar comparison to Mark
21 Zuckerberg's signature on page 2 of the "work for
22 hire" agreement with Mark Zuckerberg's signature
23 on whatever page it was on the software
24 specification agreement, those two paper
25 documents?

1 Tytell

2 A. That would have been page 6. Right
3 next to the Paul Ceglia signature is where the
4 Mark Zuckerberg signature appears. And yes, I
5 did.

6 Q. And what was the result of that
7 analysis?

8 A. I think I had mentioned that earlier is
9 that the Mark Zuckerberg signature on page 6 does
10 not have the same high level of line quality seen
11 in the Paul Ceglia signature on page 6.

12 I don't want to use "page 6" because
13 there's a newspaper in town here, the New York
14 Post, that has a Page Six with -- I don't know if
15 you've ever seen it, but it's a very specific term
16 of art to that.

17 So on the sixth page, the last page,
18 the signature page of the specification document,
19 the Mark Zuckerberg signature on that page,
20 Mr. Zuckerberg just doesn't have the same kind of
21 writing speed and style that you see in the
22 signature on that page of Mr. Ceglia. But the
23 line quality there is noticeably better than the
24 line quality on page 2 of the paper "work for
25 hire" document.

1 Tytell

2 And the comparison of the Mark
3 Zuckerberg signature on page 2 of the paper
4 document with the Mark Zuckerberg signature on the
5 page 2 of the images from mid 2010 shows the same
6 kind of qualitative and quantitative deviations
7 that are seen in the Paul Ceglia signature
8 comparison of the paper document to the mid 2010
9 document and similarly with the date next to the
10 Mark Zuckerberg signature, the 4.28.03.

11 Apparently Mr. Zuckerberg uses dots or
12 periods rather than diagonal lines as his date
13 separators. But the comparison of the numerals in
14 that date next to the Zuckerberg signature gives
15 the same result.

16 All -- each of the four elements that
17 appear on page 2 of the paper "work for hire"
18 document, the Zuckerberg signature, the dates next
19 to the Zuckerberg signature, the Ceglia signature,
20 the date next to the Ceglia signature, each of
21 those four elements compared individually letter
22 by letter, line by line, character by character,
23 as a whole and as a collective whole of those four
24 elements, when doing a comparison of the writing
25 on page 2 of the "work for hire" paper document

1 Tytell

2 with the writing on page 2 of the "work for hire"
3 mid 2010 electronic document, the results are all
4 very consistent, and the results are all
5 indicative of a tracing.

6 Q. So is it the same conclusion regarding
7 Mark Zuckerberg's signature, that his signature on
8 page 2 of the paper document, the "work for hire"
9 contract, is also a tracing, in your opinion?

10 A. Yes. And again, I don't know who
11 traced it. Mr. Zuckerberg could have traced it
12 himself, Mr. Ceglia could have traced it, John Doe
13 could have traced it. Obviously you'd have to
14 have access to that sheet of paper to be able to
15 do it, but that would be pretty much the only
16 limitation.

17 Q. Do you intend on producing a report
18 with these results to provide to the defendant?

19 A. Not at the moment.

20 Q. Did you take notes while you were doing
21 this analysis?

22 A. I -- not so much notes as working
23 images.

24 I'm sure you're familiar with the
25 technique employed by Mr. Blanco in one of his

1 Tytell

2 exhibits where he took one image and then
3 superimposed it on the other. So he did it.

4 I'm not sure that -- actually, I am
5 sure that I didn't do it exactly the same way he
6 did in terms of the -- well, not to get lost in
7 the weeds of Photoshop technicalities.

8 But I did a similar kind of exercise of
9 taking one image and superimposing it on another
10 image of these various elements that I've spoken
11 about on both page 2 and page 1.

12 So I have lots of those images, which
13 essentially constitutes notes, as well as some
14 other images that I prepared that are to compare
15 and contrast the actual formations of, let's say,
16 the Ceglia signature on the paper document with
17 the mid 2010 electronic documents -- electronic
18 images, also some comparisons of different line
19 segments and portions of the signatures of
20 Mr. Ceglia to compare and contrast the line
21 quality of the Ceglia signature from page -- from
22 the last page, the signature page, of the
23 specification with the Ceglia signature on page 2
24 of the paper "work for hire" document.

25 MR. SOUTHWELL: Mr. Boland, we have

1 Tytell

2 this document 262-2 that you asked for. I
3 don't mean to interrupt, but I just wanted to
4 let you know we have that, if you wanted it.

5 MR. BOLAND: Very well. Thank you.
6 We'll get that in a second.

7 Q. Mr. Tytell, in your business do you
8 carry liability insurance for the work that you do
9 like the work you have done in this case?

10 MR. SOUTHWELL: Objection.

11 You can answer.

12 A. Oh, I'm sorry, you objected. I didn't
13 know if I could answer.

14 MR. SOUTHWELL: Generally you can
15 answer unless I direct you not to.

16 THE WITNESS: Okay.

17 No.

18 Q. And are you aware if any of the
19 experts, while the analysis of the two-page
20 document on July 14th was occurring, if any of
21 them touched that document with their bare hands?

22 A. Yes.

23 Q. Do you know who touched it with their
24 bare hands during the examination?

25 A. I did.

1 Tytell

2 Q. Did you also touch it at times with
3 gloves on your hands?

4 A. Yes.

5 Q. And what dictates for you when you
6 would touch a document that you're examining with
7 gloves on versus times that it would be
8 appropriate to touch it with no gloves on?

9 A. Well, really nothing in particular.
10 Most documents that I've examined I haven't worn
11 gloves.

12 Q. Were you aware of the types of analysis
13 that the other experts were going to do on that
14 document after July 4th -- I'm sorry, July 14th
15 when you first had it? Did you know what was
16 going to happen afterwards as far as the
17 defendants' experts' analysis?

18 A. To which experts are you referring?

19 Q. Any of the other experts after you.
20 Did you talk -- did you know -- not talk.

21 Did you know about what their analysis
22 would be for any of the defendants' experts after
23 you?

24 A. Well, after me I knew that an ESDA
25 analysis was going to be performed, and I

1 Tytell

2 understood that ink samples would be taken for
3 chemical analysis.

4 Q. And what chemicals did you understand
5 they were going to analyze in those ink samples?

6 A. I didn't. Well, the chemical
7 constituents of the ink, which would include the
8 dye stuffs, the dyes that were present, and I
9 didn't know if they were going to also examine any
10 of the resins or solvents or other constituents of
11 the inks.

12 Q. Do you know what those components or
13 constituents of the inks were? Did you know what
14 those were on July 14th when you started -- at the
15 time when you were handling the document sometimes
16 without gloves?

17 A. I did not --

18 MR. SOUTHWELL: Objection to the
19 form -- or objection, mischaracterizes,
20 rather.

21 You can answer.

22 Q. I can ask to have a clear answer. On
23 July 14th when you first were given the document,
24 did you know what chemical -- all the chemical
25 components of the ink were that the other experts

1 Tytell

2 were going to analyze?

3 A. No.

4 Q. Have you read Mr. LaPorte's report?

5 A. The LaPorte report? No.

6 Q. Yes.

7 A. Yes, no, I have not read the LaPorte
8 report.

9 Q. Okay. And I'm talking specifically
10 about the declaration/report that he filed
11 attached to the motion to dismiss filed by the
12 defendants, that report. Have you read that?

13 A. You're going to have to give me a date
14 because -- I mean, I totally understand that for
15 you a document -- a document examiner's report is
16 something that you stick on the back of legal
17 arguments as an exhibit. But for me the brilliant
18 legal arguments by either side are the
19 miscellaneous pieces of paper that are on top of
20 the document examiner's report.

21 So if you could give me a date for the
22 document you're referring to or maybe a number so
23 that somebody could show it to me, then I would be
24 able to answer. But I just can't understand
25 the -- I can't register what document you're

1 Tytell

2 talking about based upon it being attached to some
3 kind of a legal paper.

4 Q. Do you know whether the report that
5 I've had you identify as Tytell 1, do you know
6 whether that document was ever attached to
7 anything that was filed in this case?

8 A. Yes.

9 Q. What do you understand that it was
10 attached to?

11 A. Some kind of a filing. I don't know if
12 it was a motion, a response, a counter response, a
13 reply to a response to a motion to a counter
14 motion. I don't know. These things are like the
15 Russian grandma dolls. They just go in layers
16 like an onion.

17 So I couldn't tell you what the
18 document was to which this is an Exhibit F. I'm
19 sure that if I got the whole stack of paper and I
20 read the little lines to the right of the heading
21 I would be able to tell you what it was. Whether
22 or not I actually understood what those words
23 meant is something I couldn't promise you at this
24 time.

25 Q. Have you read any declarations filed by

1 Tytell

2 Gerald LaPorte in this case?

3 A. I don't believe so.

4 Q. Have you been involved in the past with
5 drafting ASTM standards?

6 A. I have.

7 Q. Do you know if there are any ASTM
8 standards which talk about handling documents
9 during examination and whether gloves should be
10 worn by the examiner or gloves are optional?

11 A. Could you refer me to a particular
12 standard?

13 Q. No, sir, I'm just asking if you know of
14 a standard; if you don't, that's fine. I'm just
15 asking if you know of a standard that talks about
16 the wearing of gloves when you're examining a
17 document.

18 A. I think that there are some standards
19 which say -- in discussing the handling of a
20 document, is that what you're referring to?

21 Q. I'm asking if you know if there's an
22 ASTM standard regarding whether you should wear
23 gloves or not when you're examining a document.
24 That's all, if you know that.

25 A. I don't think that -- I cannot recall

1 Tytell

2 standards that specifically say, Thou shalt wear
3 gloves. I believe to my recollection now -- and
4 again, I would like to look at the standards
5 before giving you a definite answer.

6 I think that there's a generalized
7 caution to handle the documents with care and that
8 there may be an e.g., a for instance, a gratuitous
9 example of for instance with gloves.

10 And I do recall that there was an issue
11 of -- at one time the wording was with cotton
12 gloves or cloth gloves, and then it was changed to
13 not use cloth gloves.

14 So gloves are not always a good things.
15 Gloves can sometimes did deleterious.

16 Q. What kind of negative effects can the
17 wearing of gloves have when handling a document
18 during an examination?

19 A. Well, the wearing of cloth gloves, some
20 experimentation has shown, can -- I don't want to
21 use a term like "mess up" but can have a
22 deleterious effect on the document, disturbing the
23 paper surface such that you don't -- that you
24 would not be able to subsequently visualize latent
25 impressions through the use of technology such as

1 Tytell

2 the ESDA machine -- and the ESDA, capital E,
3 capital S, capital D, capital A, electrostatic
4 static detection apparatus.

5 That kind of machine is used, as you
6 may be aware, to determine latent visual
7 impression on documents, indented writing. And
8 there had been some research done, paper
9 presented, that suggested that cloth gloves can be
10 harmful and can interfere with subsequent ESDA
11 examinations. So the ASTM recommendation
12 regarding cloth gloves was withdrawn.

13 Q. What kind of damage can come to a
14 document handling it during an examination with
15 latex gloves like were used in this case?

16 A. I would -- I don't know. Are you
17 asking me to speculate on this topic, because --

18 Q. No, only if you know. Are there any --
19 is there any literature or any knowledge or
20 experience you have as to the kind of damage that
21 can be done to a document using latex gloves like
22 were used in this case?

23 A. Well, I'm not sure that the same kind
24 of latex gloves were used universally in this
25 case, first of all. So can you be a little more

1 Tytell

2 specific, please?

3 Q. Do any type of latex gloves, wearing
4 them on your hands and handling a document, have
5 you had experience with that has caused damage to
6 a document?

7 A. I have not had experience, but I have
8 heard that some people have said that the kind of
9 powder that is used on certain kinds of latex
10 gloves might be problematic. I have not had
11 personal experience in that area.

12 Q. But during portions of the examination
13 of the document in this case, you did wear latex
14 gloves; correct?

15 A. Correct.

16 Q. Do you feel that you damaged the
17 document while wearing those latex gloves and
18 handling it?

19 A. Could you define "damage," please?

20 Q. Did you contaminate it with some
21 substance that wasn't originally on the document
22 by handling it with latex gloves?

23 A. Like latex, for instance?

24 Q. Any substance at all. You're the
25 expert. I don't know. Is there any substance you

1 Tytell

2 could have contaminated a document with by
3 handling it with latex gloves?

4 A. I have no idea. You're asking me to
5 speculate here. I would be happy to speculate if
6 that's what you want.

7 Q. No, I'm just saying do you know for a
8 fact whether you did contaminate the document by
9 handling it with latex gloves. Do you know?

10 A. I do not know.

11 Q. What is the purpose -- why did you
12 choose at portions during this examination to wear
13 latex gloves while handling the document?

14 A. It seemed like a good idea at the time.

15 Q. Why did it seem like a good idea?

16 A. An excess of caution, I think.

17 Q. What were you cautioning against by
18 wearing latex gloves?

19 A. Leaving my fingerprints on the
20 document. That's pretty much the reason people
21 wear latex gloves in examinations.

22 Q. Were you concerned about transferring
23 any contaminants from your fingers, other than a
24 fingerprint, to the document?

25 A. No, I generally approach not just the

1 Tytell

2 court but the documents with clean hands. I --
3 the problem with fingerprints in document
4 examination is that the ESDA machine develops
5 fingerprints.

6 In fact, the original research in the
7 1970s in England that led Messrs. Foster and
8 Freeman to the discovery, if you will, for ESDA
9 for the development of imprinted writing, the
10 original purpose for that research was to develop
11 fingerprints on paper.

12 This is in the midst of what is
13 euphemistically referred to as the troubles in
14 northern Ireland which also spilled over
15 considerably into England. And they were -- the
16 home office in England had a research project
17 funded to develop fingerprints on paper, and there
18 were many, many different techniques that were
19 developed during this time period.

20 Among them was they were trying to
21 develop it with the ESDA machine. And the people
22 who were working on it said, Well, you know, we're
23 actually getting some results on fingerprints, but
24 we keep getting this indented writing that is sort
25 of interfering with the fingerprints.

1 Tytell

2 And when they told that to the right
3 person, who realized -- it wasn't quite like
4 Fleming discovering penicillin, but they realized
5 they had stumbled onto something extremely
6 interesting.

7 Then they redirected their efforts to
8 the development of latent writing as being
9 potentially more useful than the quality of
10 fingerprints they were getting from that side of
11 the research.

12 So it has been known virtually from the
13 very beginning that the ESDA technology, the ESDA
14 machine, will develop fingerprints, and you don't
15 want those fingerprints to interfere with your
16 subsequent ESDA examinations.

17 And that's why document examiners -- I
18 mean, other people in the forensic world have
19 other reasons for doing everything. But that's
20 the reason that we're essentially watching out for
21 fingerprints is the problem of fingerprints on
22 ESDA.

23 Q. Do you know of any common household
24 products that have chemicals in them that could be
25 transferred to a document? For example, if you

1 Tytell

2 had lotion on your hands and you touched a
3 document, do you know if that can transfer
4 contaminants to the document?

5 A. What kind of lotion are you referring
6 to as the household product?

7 Q. Any kind of hand lotion. As a matter
8 of your years and years of experience handling
9 documents, have you ever come across a scenario
10 where someone has something on their hand --
11 lotion or shampoo remnants or whatever -- and they
12 handle a document like that and transfer some of
13 that material to the document? Can that happen?

14 A. Well, I do recall a case that was shown
15 to me as a "hey, look at this, this is so cool
16 kind" of case at the Scotland Yard lab back I
17 guess it would be in the 1980s, in the early days
18 of laser work with fingerprints, that they had
19 found that a particular kind of hand cleaner used
20 by car mechanics left a residue on the fingers
21 that could be transferred to other things like
22 steering wheels, guns, paper as well, and that
23 this particular mechanic's hand cleaner did have a
24 strong fluorescence when illuminated with a
25 particular wavelength from a -- I'm trying to

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Tytell

remember if it was a copper vapor laser or a
frequency double Nd: YAG laser, anyway, the kind
of lasers they were using back then. It worked
out that this worked very well. So that would be
one kind of an instance.

(Time noted: 1:00 p.m.)

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2

A F T E R N O O N S E S S I O N

3

(Time noted: 1:32 p.m.)

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P E T E R V. T Y T E L L ,

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EXAMINATION CONTINUED BY

15

MR. BOLAND:

16

Q. Mr. Tytell, can you hear me okay?

17

18

A. Yes, at the moment the technology is
being good to us.

19

Q. Okay. Good.

20

21

22

23

I wanted to go back just a bit about
your comment about you come to the court the same
way you handle documents, with clean hands. Do
you remember that?

24

25

A. Yes. Excuse me, wait one moment,
please. I'm not sure that is what I said exactly.

1 Tytell

2 Q. Well, let me qualify it, then. It's
3 true that while you were handling the document in
4 this case starting July 14th and for the several
5 days that you were examining it you washed your
6 hands regularly to try and be cautious about
7 contaminating the document?

8 A. I wash my hands regularly whether or
9 not I'm examining documents.

10 Q. But I'm focused on July 14th and the
11 days while you handled the document. You washed
12 your hands during that time regularly?

13 A. I washed my hands when they were -- if
14 they were dirty or if I had been to the lavatory.

15 Q. And what kind of soap did you use?

16 A. The soap that was provided there.

17 Q. And did you wash your hands at the
18 hotel in the morning before you came over to
19 handle the document, I assume?

20 A. Right.

21 Q. What kind of soap did you use there?

22 A. Bar soap.

23 Q. Do you know what the ingredients were,
24 like specifically the chemical ingredients of the
25 soap at the hotel?

1 Tytell

2 A. No.

3 Q. Do you know what the ingredients were
4 of the soap that was provided in the lavatory at
5 the law firm where you were examining the
6 document?

7 A. No.

8 Q. Are you aware of whether either one of
9 those soaps contained a chemical called
10 phenoxyethanol?

11 MR. SOUTHWELL: Objection. He just
12 said he doesn't know the ingredients.

13 Q. Do you know what phenoxyethanol is,
14 sir?

15 A. I've heard the term before.

16 Q. What do you understand it to be?

17 A. A solvent.

18 Q. Do you know if that solvent is found in
19 soaps?

20 A. No, I don't.

21 Q. Do you know any other -- do you know
22 where that solvent is found in products that are
23 available to consumers?

24 A. It is my understanding that it is found
25 in certain ballpoint pen inks.

1 Tytell

2 Q. Other than inks do you know of any
3 other products that contain that component?

4 A. I do not know of any others, but from
5 your questioning I understand that you might think
6 there are.

7 Q. Well, it's not about what I think. I'm
8 just wondering what you knew.

9 A. No, I'm only familiar with that
10 chemical based upon my understanding that it is
11 used in certain inks.

12 Q. When we talked earlier, you mentioned
13 one of your concerns that causes you to be
14 cautious when handling documents is to try and
15 avoid putting a fingerprint on a document. Do you
16 recall that?

17 A. Yes, because of the effect that
18 fingerprints can have on ESDA work.

19 Q. And it's true, sir, that by putting a
20 fingerprint on a document that happens by causing
21 oils from the skin, in this case it would be your
22 skin if you had accidentally done it -- I'm not
23 saying you did or didn't -- but oils from the skin
24 to be transferred to the document and that makes
25 the imprint of the fingerprint; right?

1 Tytell

2 A. I am aware that that is one way that
3 fingerprints can occur.

4 Q. What are other ways they can occur?

5 A. Well, I guess you're limiting it to
6 documents; right?

7 Q. Yes, what are other ways fingerprints
8 can appear on documents besides transferring the
9 oil from someone's fingertips to the document?

10 A. I was thinking about what they're
11 called where a fingerprint is left in a soft
12 substance such as soft wax or clay. They're
13 called plastic fingerprints sometimes. I didn't
14 realize you were limiting it to only documents.

15 Q. You earlier talked about a tracing as a
16 means by which the signatures for both Paul Ceglia
17 and Mark Zuckerberg now appear on the second page
18 of the "work for hire" document. Do you recall
19 that testimony?

20 A. I recall discussing tracings and the
21 reasons to understand that this document has all
22 the indicia of having been a tracing, yes.

23 Q. Is it your conclusion from your
24 analysis that those two signatures on page 2 of
25 the paper document, the "work for hire" document,

1 Tytell

2 were created by tracing?

3 A. Everything I've seen to date points in
4 that direction. I haven't seen anything contrary
5 to that, but I would be interested in some further
6 inquiry to determine whether or not that would be
7 a final definite determination.

8 Q. And how is a tracing done, in your
9 experience?

10 A. Well, there are a number of different
11 ways that have been discussed in the literature
12 for doing tracings. Would you like a catalog of
13 those?

14 Q. Well, first, how many different ways
15 are there to make a tracing of a signature?

16 A. I would suggest that's probably almost
17 infinite.

18 Q. Well, would one of those be someone
19 putting the signature of the writing they want to
20 trace next to a blank piece of paper and then just
21 trying to sort of mimic what they're seeing on the
22 other piece of paper on this new blank piece of
23 paper? Is that considered a tracing?

24 A. No. That would be considered a drawn
25 simulation or a copied simulation. It's a subset

1 Tytell

2 or subcategory of free-hand simulations where --
3 another one would be if I just remembered I've
4 seen a signature, I'll remember what it looks
5 like, I'm going to try and imitate it from memory.

6 I've seen a signature, it's sitting
7 right here next to me, I'm going to copy it
8 looking back and forth from the model signature
9 that I'm copying to the page where I'm writing
10 what I see on the signature.

11 There may be elements of practice
12 involved in this kind of simulation, you know, sit
13 and practice it for three weeks, see how good you
14 get at it.

15 These are all different kinds of
16 simulations, but that would be distinct
17 methodologically from a tracing or what is called
18 a tracing.

19 Q. Well, I'm a layperson, so tell me if
20 this definition of tracing is what you're talking
21 about, and that is someone having the signature
22 they want to trace on a piece of paper and then
23 laying the other piece of paper blank on top of
24 that and trying to look through the top piece of
25 paper to the one underneath and actually trace out

1 Tytell

2 what they're seeing on the underneath page.

3 Is that what you mean by "tracing"
4 generally?

5 A. Generally, yes, that is one form of
6 tracing, one of many.

7 Q. Are there any forms of tracing that do
8 not involve one piece of paper on top of the
9 other, sort of like what I described?

10 A. Yes.

11 Q. What form of tracing took place in this
12 case? What's your opinion there?

13 A. I don't know which of the many
14 possibilities you described -- just using the
15 particular methodology that you mentioned
16 previously, the model signature -- is it okay to
17 use this term of art, the "the model signature,"
18 the page that has the signature that you want to
19 copy? Okay? Can you I use that so you'll
20 understand what I mean?

21 Q. Yes.

22 A. You said you have a piece of paper with
23 a signature on it. Let's just call that the model
24 signature. That, of course, could be a real
25 signature, an ink signature, or it could be a

1 Tytell

2 photocopy or anything else. But it's on a
3 physical piece of paper.

4 So you say there's only one piece of
5 paper on top of the model signature piece of
6 paper. You can have two pieces of paper on top of
7 the model signature piece of paper. You're saying
8 you're looking through the top piece of paper, the
9 one you're actually writing on in creating the
10 tracing. It's not all that easy.

11 It's much easier if you have a light
12 source behind your model signature so that it
13 can -- it can help you see through that. And that
14 light source could be a light box or that light
15 source could be the window.

16 Actually you can see that in a movie
17 called the Apprenticeship of Duddy Kravitz. If
18 you ever happen to see that movie, there's a scene
19 there where he traces a signature holding the
20 model up to the window and putting the -- I think
21 it's a check endorsement over it.

22 So that's another way to do it, to have
23 a light source from behind.

24 Nowadays you could probably have an
25 image of a signature on a computer screen and

1 Tytell

2 trace from that. And that's still, you know, one
3 page on top of another.

4 Q. What is your conclusion about how the
5 tracing occurred in this case?

6 A. Carefully.

7 Q. I mean, which one of those methods?

8 A. I have not made a determination about
9 that. I am just of the opinion it's a careful
10 tracing. There are also -- there's another method
11 where you can project the signature from above
12 onto a piece of paper, and then it doesn't matter
13 what's underneath the page where you're tracing
14 the signature because the signature is projected
15 from above. And there were a number of different
16 devices that can be used for that.

17 Q. Can you identify for me the model
18 signature in this case that you believe was used
19 to complete the tracings of Paul Ceglia's
20 signature specifically? Let's just go on that
21 one.

22 A. Well, as I said before the break, the
23 quality and quantity of the agreements and the
24 quality and the quantity of the differences point
25 to the signature of Paul Ceglia on page 2 of the

1 Tytell

2 mid 2010 images of the "work for hire" document,
3 such as the copy attached to the complaint as
4 being either the model for the signature on page 2
5 of the paper "work for hire" document or another
6 tracing made from the same model.

7 And that document does exhibit, even
8 from the copy we see, some better line quality
9 features than are apparent in the Paul Ceglia
10 signature on page 2 of the paper document.

11 Q. The document from which -- the model
12 signature from which the tracing was made of Paul
13 Ceglia's signature that now appears on the "work
14 for hire" agreement, according to you, is the page
15 2 of the document that was attached to the
16 complaint in this case, or the amended complaint?

17 A. Page 2 -- well, the image, the copy
18 that was there, could have been used, a printout
19 of the TIFF file sent by Ceglia to Argentieri,
20 whatever document it was that was scanned to
21 create that TIFF file or whatever document was
22 copied or printed out to create the attachment to
23 the complaint.

24 You know, there's a plethora of
25 possibilities all subsumed in this idea of a mid

1 Tytell

2 2010 document. And as I said, more than once, I'm
3 afraid -- I am getting a bit repetitious here --
4 as I said previously, that signature on the mid
5 2010 document or copies thereof would be a model
6 signature or another tracing or copy made from the
7 same model.

8 Q. Well, where's the model -- if that is a
9 tracing made from another model, where is that
10 model for that tracing of the 2010 -- mid 2010 one
11 that you're talking about?

12 A. I don't know. It could be on the
13 document that I've seen which people call the
14 StreetFax contract. There's another --

15 Q. I'm sorry, go ahead.

16 A. No, I didn't mean to interrupt you.

17 Q. Did you compare the second page of the
18 so-called StreetFax contract with any other second
19 pages of the "work for hire" contract either in
20 paper or a digital image of it?

21 A. Yes.

22 Q. And what was the result of that
23 comparison?

24 A. It agrees with the second page of the
25 mid 2010 TIFF files, et cetera, et cetera. I

1 Tytell

2 mean, we have to get some kind of I guess a
3 shortcut phrase for all of that stuff from the
4 attachment to the complaint and the TIFF file sent
5 by Mr. Ceglia to Mr. Argentieri. So if you
6 understand when I say the mid 2010 images, that's
7 what I'm talking about, if that's okay with you.

8 Q. Yes.

9 A. Okay. Good. All right. Page 2 --
10 yes, I'm sorry?

11 Q. Let me ask some specifics. Does page 2
12 of the StreetFax contract, based on your analysis,
13 make match -- not match. Is it the same as page 2
14 of Mr. Osborn's scan that you reviewed?

15 MR. SOUTHWELL: Objection. Are you
16 asking about the signature still or are you
17 asking a broader question? I'm not sure I
18 understand the question.

19 Q. I'm just asking the signature on page 2
20 of the so-called StreetFax contract of Paul
21 Ceglia, how does that compare to Paul Ceglia's
22 signature as it appears on page 2 of Mr. Osborn's
23 scan of the "work for hire" document.

24 A. It differs -- okay, page 2 of the
25 tracks differs from page 2 of the Osborn scan of

1 Tytell

2 the paper document qualitatively and
3 quantitatively the same way, to the extent it's
4 possible to see, as the page 2 Paul Ceglia
5 signature from the mid 2010 images differs from
6 the Ceglia signature on the page 2 of the Osborn
7 scans.

8 Q. I'm asking the same question about
9 Mr. Zuckerberg's signature on the "work for hire"
10 paper contract that you started analyzing July
11 14th, what -- is it the same set of documents that
12 you believe are the potential model signatures
13 from which that tracing of Mr. Zuckerberg's
14 signature was created?

15 A. I'm sorry, you lost me here.

16 Q. Mr. Zuckerberg's signature on page 2 of
17 the "work for hire" agreement that you analyzed on
18 July 14th, starting on July 14th, you testified
19 that you believe that's also a tracing, not his
20 original signature, or his free-hand natural
21 signature; right?

22 A. That's what all of the indicia point
23 to, yes.

24 Q. And what was the model signature used
25 to create the tracing of Mr. Zuckerberg's

1 Tytell

2 signature on that two-page paper document you
3 analyzed starting July 14th?

4 A. Again, all of the features that I've
5 been able to see so far point towards the Mark
6 Zuckerberg signature on page 2 of the mid 2010
7 images as being the model for that signature or
8 another tracing from a common model.

9 Q. In your opinion was the StreetFax
10 document legible enough to make a scientific
11 conclusion about the handwriting?

12 A. To the extent that it was possible to
13 see what could be seen, it did agree very closely
14 with the features that I have outlined here.

15 Q. Do you know if there is any other
16 expert for the defendants that have analyzed any
17 handwriting on the "work for hire" agreement in
18 this case?

19 A. Yes.

20 Q. And who else do you know has done that?

21 A. I don't know about the "else" part,
22 since I'm not sure that I've actually done it to a
23 completion point and I don't believe I've done it
24 because I was asked to do it. But the -- I
25 believe that Mr. Lesnevich has looked at the

1 Tytell

2 handwriting issues regarding the "work for hire"
3 contract.

4 Q. Do you know if he's analyzed the
5 signature of Paul Ceglia on that contract?

6 A. I don't know what he's done regarding
7 page 2 of the document. I'm aware of what he has
8 done regarding page 1.

9 Q. Other than Mr. Lesnevich, do you know
10 of any other defendants' expert who has analyzed
11 the handwriting on either page 1 or page 2 of the
12 "work for hire" agreement?

13 A. Could you be a little more specific
14 about who we're including as defendants' experts.

15 Q. Gerald LaPorte?

16 A. Okay. And we're talking --

17 Q. Has he done any analysis of the
18 handwriting on either of the pages of the
19 document, as you know?

20 A. Not that I'm aware of.

21 Q. Has Albert Lyter done that, if you
22 know?

23 A. Not that I'm aware of.

24 Q. Has Frank Romano done that, if you
25 know?

1 Tytell

2 A. Not that I'm aware of.

3 Q. Do you know all of the experts that the
4 defendants have hired to analyze the document in
5 this case?

6 A. I don't know if I know.

7 Q. Can you name all the ones that you're
8 aware of the defendants have hired to analyze any
9 part of document in this case?

10 A. Well, you mentioned several: Professor
11 Romano, Mr. LaPorte, Mr. Lesnevich, Dr. Lyter. I
12 became aware, because I ran into him today, of
13 Dr. McMenamin. Let's see. LaPorte and Lyter and
14 Lesnevich. That's the Ls. McMenamin, Romano.

15 And I'm sure that there are a host of
16 other experts on other subjects related in some
17 way, shape, or form to this document, but I don't
18 know of them -- I don't know, you know, the names
19 of the people specifically who would be involved.

20 Q. After you were retained, did you
21 suggest to the defendants to hire any of the
22 experts that are currently working for them that
23 you just listed?

24 A. Let's see. Let me just run down the
25 inventory here. Lesnevich, Lyter, LaPorte. I may

1 Tytell

2 have given them a list of all of the people I know
3 who do ink work in the U.S. and Canada. I'm not
4 sure if that's a recommendation. It's a fairly
5 small number. So I would have mentioned to them.
6 Aginsky, Lyter, LaPorte, et cetera.

7 So, I mean, that's not really a
8 recommendation; that's a listing of everybody.

9 I may have also put them in contact or
10 given them the contact information for
11 Dr. McMenamin, but I don't know whether or not I
12 did.

13 Q. When the July 14th analysis began, was
14 there any one of you experts who was, for lack of
15 a better word, sort of in charge of how the
16 examination would proceed?

17 A. No, I don't think there was a chain of
18 command situation there.

19 Q. I asked you before about handling the
20 document without gloves. Other than yourself, did
21 you notice any other experts handling the document
22 without gloves on? And if you could list them,
23 please.

24 A. Mr. Lesnevich and not -- that's the
25 only one who I actually saw handling the document.

1 Tytell

2 Q. Do you know if he transferred any
3 contaminants from his hands to the document when
4 he touched it?

5 A. No.

6 Q. Is it your opinion that the document
7 you analyzed starting July 14th in Buffalo is the
8 same document that Mr. Aginsky scanned and that
9 you saw a scan of that document?

10 A. I believe that's so. That's my opinion
11 as of the material that I've looked at to date,
12 that it was the same document, however, in a
13 radically different condition.

14 Q. If you could take a look at the exhibit
15 that the Gibson, Dunn's folks were so nice to
16 print out for me, document 240-1. If we could
17 mark that Tytell 2.

18 MR. SOUTHWELL: You want just 240-1?

19 MR. BOLAND: 240-1 should be a two-page
20 document, is it not?

21 MR. SOUTHWELL: Okay, yes.

22 MR. BOLAND: I'm sorry, a three-page --

23 MR. SOUTHWELL: Yeah, it's three pages
24 to Exhibit A and then two images of scans. I
25 have a copy of all of 240 that we have

1 Tytell

2 printed, but if you want me to separate it
3 out, I can do that.

4 MR. BOLAND: Yes, I just wanted 240-1.
5 That was it.

6 (Tytell Exhibit 2, document labeled
7 "Exhibit A", marked for identification.)

8 Q. Mr. Tytell, if you could identify that
9 document for the record, please.

10 A. I'm looking at a document marked at the
11 top 240-1. The first page says page 1 of 3. It
12 is a three-page document, and the first page has
13 "Exhibit A" printed on it, marked Tytell 2. And
14 then the next page is some kind of an image of the
15 "work for hire" contract marked page 2 of 3 with
16 the faded ink on the interlineation, et cetera.
17 And then the last page, the third page of this
18 240-1, Tytell 2, headed page 3 of 3, is some kind
19 of an image, apparently, of page 2 with the faded
20 ink of the signatures -- of both signatures and
21 both dates.

22 Q. And is it correct, sir, that these are
23 printouts of two scans -- two scans that you took
24 of page 1 and page 2 of the "work for hire" paper
25 contract?

1 Tytell

2 A. I believe that's incorrect, but I don't
3 know.

4 Q. Let's look at the other exhibit that
5 you -- the other item there, which is -- I believe
6 it's document 238-2.

7 A. Let's start again. 2 -- well, I have
8 in front of me two exhibits, Tytell 1 and Tytell
9 2; right?

10 Q. Yes. If you could --

11 A. Tytell 2 is a document 240-1. And
12 you're asking me about another document?

13 Q. Yeah, there should be one other
14 exhibit, if they can hand it to you, which is
15 232-2, which was printed by Gibson, Dunn for me.

16 A. I'm sorry, I hadn't seen that yet so...

17 MR. SOUTHWELL: Hold on.

18 (Tytell Exhibit 3, document labeled
19 "Exhibit B", marked for identification.)

20 Q. If you could just describe that
21 document for the record, Mr. Tytell.

22 A. Okay. This is marked Exhibit B, and
23 it's marked -- it's apparently five pages. Page 1
24 of 5 says Exhibit B, and page 2 of 5 is some kind
25 of image of the "work for hire" contract page 1

1 Tytell

2 with the faded ink of the interlineation. Page 3
3 of 5 appears to be the reverse of page 1 of the
4 paper "work for hire" document, and there does
5 seem to be -- yeah, you can see in the upper right
6 the darker nature of the corner there.

7 Page 4 of 5 appears to be an image of
8 the front of page 2 of the paper "work for hire"
9 document with the brownish, off-color, whatever,
10 ink of the signatures of Mr. Ceglia and Zuckerberg
11 and the dates next to them faded out ink. And
12 then page 5 of 5 appears to be the reverse of that
13 page.

14 So that's what I have here as Tytell 3.

15 Q. Do you recognize Tytell 3 as a printout
16 of the scan of the "work for hire" document that
17 you created when you first received it on July
18 14th --

19 MR. SOUTHWELL: Objection.

20 Q. -- 2011?

21 MR. SOUTHWELL: Objection. Calls for
22 speculation. I'm not sure how you can expect
23 him to identify this.

24 Q. Do you recognize those as your scans of
25 that document; "yes" or "no."

1 Tytell

2 A. Well, first of all, what I'm looking at
3 are not scans.

4 Q. Printouts of your scans of the
5 documents. Do you recognize them as printouts of
6 your scans?

7 A. Well, my scans did not have this
8 heading at the top, Case 1:10, et cetera,
9 et cetera, page 2 of 5, page 3 of 5. So that was
10 not part of my scan.

11 Q. Fair enough.
12 Anything else on there that wouldn't
13 have been part of your scan?

14 A. I have no idea whether there are
15 additions or subtractions relative to what I had
16 scanned, if these are indeed documents that in
17 some way are traced back -- or traceable back to
18 the scans that I made at -- on one of the several
19 occasions when I did scan page 1 and 2 of the
20 "work for hire" document. It was scanned several
21 times during that day.

22 Q. Did you provide copies of the
23 electronic files of those scans to the defendants'
24 attorneys?

25 A. I provided the copies of the I guess

1 Tytell

2 what you were calling them before the raw files,
3 the native format files, is that what --

4 Q. Yes, electronic files of those scans,
5 did you provide those?

6 A. Right, the actual -- I'm sorry, I don't
7 want to talk over you.

8 MR. SOUTHWELL: I want to clarify what
9 you're referring to as "those scans," and I
10 don't know if that's clear.

11 MR. BOLAND: I'll be clearer.

12 Q. The very -- when the document was first
13 taken out of the envelope and placed on the table
14 on July 14th, were you the first person to scan
15 that two-page "work for hire" document that
16 morning?

17 A. Yes.

18 Q. My questions now are referring to the
19 electronic file that would have been created by
20 those scans that we just talked about right just
21 now in that previous question.

22 Did you give copies of the electronic
23 file of those scans to the defendants' attorneys?

24 A. Yes.

25 Q. Do you know if the defendants'

1 Tytell

2 attorneys printed those scans as an exhibit to
3 anything they have filed in this case, if you
4 know?

5 A. I don't know, but -- well, I don't
6 know.

7 Q. Looking at Tytell 3 as it's printed out
8 in front of you, can you look at the
9 interlineation that appears ton page 1 of that
10 document.

11 A. Yes.

12 Q. And do you see the word, although
13 faded, "May," as in the month of May, that is
14 handwritten in that interlineation?

15 A. Well, when you said page 1, page 1 of 5
16 is just the words "Exhibit B." I assume you're
17 referring to page 2 of 5 of Tytell 3, which is
18 some kind of an image of the front of page 1 of
19 the "work for hire" contract?

20 Q. Yes, page 1 of the "work for hire"
21 contract, which is part of this overall exhibit
22 you have.

23 A. Right, which is --

24 Q. If you could look at page 1 of the
25 contract itself.

1 Tytell

2 A. Which is mark as page 2 of 5 in the
3 header. Okay.

4 Q. Yeah, I understand that. But you're on
5 page 1 of the actual contract; right?

6 A. Well, I'm not on page 1 of the actual
7 contract; I'm on page 2 of the exhibit, which is a
8 picture of something, or an image of something.

9 Q. Yes. And do you see the interlineation
10 that is in that -- on that page of that document?

11 A. Yes, sir.

12 Q. And do you see specifically the
13 handwritten word "May," as in the month of May,
14 that's in that interlineation?

15 A. Yes.

16 Q. Now, can you refer to Tytell 2, which
17 is also, I think you would agree, appears to
18 contain within it pages of a scan of page 1 of the
19 "work for hire" contract?

20 A. Yes.

21 Q. Can you look at the interlineation on
22 that Tytell 2 and the word "May" as in the month
23 of May in that interlineation? Do you see that,
24 sir?

25 A. I do.

1 Tytell

2 Q. How do those words, the month of May,
3 compare as far as the fadedness of their
4 appearance in the exhibits you have in front of
5 you?

6 A. Well, this is comparing apples with
7 pineapples because --

8 Q. How so?

9 A. Well, first of all, the proper
10 comparison would be of -- if you wanted to do such
11 a thing, first of all, I'm looking at what are
12 apparently reduced-size images. These are not
13 enlargements by any means.

14 These actually seem to have reduced an
15 8.5 by 11 page to something on the order of 8 by
16 10 or maybe even a little smaller. I don't have a
17 ruler on me. So that makes it a little tough to
18 compare a letter like the letter M in "May," that
19 I do not know the source of either of these
20 images.

21 But unless they were taken on the
22 scanner with the same settings, albeit at two
23 different time points, then I don't think it would
24 be a useful exercise to compare them for the level
25 of detail that you seem to be requesting.

1 Tytell

2 There are two different scans of the
3 page 1 of the "work for hire" contract taken on
4 the same scanner with the same computer at the
5 same settings on the morning of July 14th and on
6 the afternoon of July 14th. Those two scans would
7 be comparable from like -- I remember 9:18 is a
8 number that's in my report and a second scan
9 around 1 p.m. Those would be comparable.

10 I don't think this exercise is really a
11 valid one.

12 Q. I want to go over that so I clearly
13 understand your answer. Is it your opinion that
14 to compare two scans of what purport to be the
15 same document it's important to know the model of
16 scanner that both scans were created from?

17 A. No.

18 Q. It's not? It won't make a difference
19 in the output of that scanning operation if it's a
20 different type of scanner that scans the document?

21 A. Oh, it can. It certainly can.

22 Q. And how --

23 A. But, you see, that's not -- I'm sorry,
24 Mr. Boland, but that's not what you were asking me
25 to do. You were not asking me to compare two

1 Tytell

2 scans to I believe you're calling them native
3 files. You're not asking me to do that. That
4 would be an entirely different exercise.

5 You're asking me to compare a
6 printout -- and I don't know if these were printed
7 out on the same printer or not. I don't know what
8 the settings might have been at one printing or
9 another. I'm looking at two printouts.

10 Working backwards towards the
11 underlying native format files that you had
12 referred to, I don't know if the thing that was
13 printed out is a PDF file that was processed by a
14 court or other computer in Buffalo that was
15 processing another PDF file that was submitted to
16 that court or that court computer by some
17 attorney, some law firm's computer, and that that
18 PDF file in turn had been created from a PDF file
19 that I might have submitted or somebody else might
20 have submitted a PDF file which would have been
21 based somewhere on another file going backwards to
22 at some point the file that you referred to as the
23 native format file.

24 So just comparing these two printouts,
25 these two pieces of paper, and a very small,

1 Tytell

2 reduced detail on those printouts, not even same
3 size as life-size, whatever that might have been,
4 it's just not a valid exercise.

5 But I'm very happy to engage in a
6 completely invalid exercise if that's what you
7 want. Well, I can't say I'm really happy to do
8 it, but I'm willing to.

9 Q. So would you say it's an unfair
10 question, then, to ask you to compare a printout
11 to an electronic scan of a document?

12 A. Not necessarily.

13 Q. But could it be? Would there be
14 situations where that would not be an appropriate
15 comparison?

16 A. We live in such a wonderfully huge and
17 infinite universe that there are situations where
18 virtually anything is appropriate and virtually
19 anything is inappropriate.

20 Q. So are you comfortable -- have you ever
21 reached a scientific conclusion in one of your
22 reports by comparing a document that was printed
23 versus the claim that that same document you're
24 looking at in electronic format on a computer
25 screen? Have you ever compared those two to try

1 Tytell

2 to make a determination about a document?

3 A. I think I've gotten lost here. I'm
4 sorry. Could you try that again, please? I
5 apologize.

6 Q. Let me break it down, because you went
7 through quite a list, and I want to talk about
8 that.

9 When comparing -- you called it apples
10 to pineapples or some such thing. When comparing
11 the two exhibits you have in front of you, Tytell
12 2 and Tytell 3, you pointed out a bunch of
13 considerations that could result in differences of
14 what you're seeing from front of you right now
15 there on the table; correct?

16 A. Yes.

17 Q. Do those differences make it unfair for
18 me to ask you to compare the word "May" in those
19 two documents and how vibrant the ink appears? Is
20 that still -- can you still come to a
21 scientifically valid conclusion regarding that
22 comparison or not?

23 A. Well, I'm not sure about the fairness
24 of it. And certainly I can look at them, although
25 they are reduced in size and anything that small

1 Tytell

2 is the kind of thing that I would usually want to
3 look at with magnification, just because that's my
4 habit.

5 You can compare any two objects, and
6 you can compare apples and pineapples. You can
7 compare apples and oranges. And there are many
8 points of similarity and many points of
9 difference. Apples and pineapples both have
10 juice.

11 But the comparison that you're asking
12 for -- and I can do it for you, if you wish, but I
13 just don't think that it's a meaningful comparison
14 in terms of getting to the basic issue of whether
15 or not the ink on the paper "work for hire"
16 document was faded out to a very light brown or
17 tan at the moment it was produced on the morning
18 of July 14th.

19 Q. And when you say "faded," compared to
20 what was that ink faded?

21 A. Compared to the image that had been --
22 the images that had been captured in January by
23 plaintiff's experts.

24 Q. So you compared those electronic
25 scanned images of that "work for hire" document to

1 Tytell

2 the actual document on July 14th and concluded
3 that the ink had faded; is that correct?

4 A. I compared some of the images that had
5 been captured in January to the document on July
6 14th. I compared the images that were attached to
7 the -- I believe they were June 16th or June 17th,
8 2011, declarations by plaintiff's experts.

9 Q. Do you feel that's a scientifically
10 valid comparison?

11 A. Yes. For the purpose that was involved
12 there, yes.

13 Q. And can you compare Tytell 2 and Tytell
14 3 that you have in front of you and the letter M
15 in the word "May" and how does -- do they look --
16 do the ink in those two letters M in those two
17 exhibits you have in front of you seem like one is
18 more faded than the other?

19 A. I can do that, but this is not in any
20 way a parallel kind of comparison. I believe I'm
21 sitting in a room that you have sat in previously
22 with a very beautiful view of the skyline of New
23 York, and you're asking for a comparison at the
24 distance of, let's say, the length of Manhattan
25 island from midtown to the southern tip, which is

1 Tytell

2 maybe 5 miles, of a building -- one building is,
3 let's say, 85 stories and the other building is 86
4 stories. And you're asking me to compare a very
5 subtle difference in a reduced image far away,
6 when you're asking me to compare these -- let me
7 just finish, if I might -- of Tytell 2 and 3.

8 However, the kind of difference that
9 was apparent on July 14th would be the difference
10 between the Empire State Building and a one-story
11 taxpayer. The differences are order of magnitude
12 separated. It's the difference between black,
13 dark ink and black as the toner on the images and
14 something that is faded to the point of almost not
15 being there.

16 And now you would suggest that that
17 kind of a comparison, such as -- which is the
18 comparison that took place on July 14th, is in
19 some way analogous to a comparison of dark-medium
20 to medium-medium brown or tan, as these two --
21 whatever is on these two pages. And it's just --
22 the two kinds of comparisons are not comparable.

23 But again, if you'd like me to do it,
24 I'd be happy to do it.

25 Q. The two exhibits in front of you, does

1 Tytell

2 the word M in "May" appear more faded in one of
3 those exhibits than the other? That's my
4 question. Not about buildings, not about
5 skylines, just the letter M in those two exhibits.

6 A. I'm sure there are differences because
7 they are two different images. However, to be
8 able to quantify the difference without
9 magnification, looking at these reduced images, is
10 not something that I feel comfortable doing. But
11 I'll try.

12 I just -- I don't -- I don't really see
13 the details. I would look at it with
14 magnification before I would want to venture an
15 opinion on it but...

16 Q. I understand, sir, you would prefer to
17 magnify. I'm saying looking at it just as it is,
18 does the M appear more faded in one of the
19 exhibits? Just "yes" or "no," looking at it as
20 you can.

21 A. Well, the overall image appears darker
22 on Tytell 2.

23 Q. The letter M, sir. The letter M. I'm
24 referring to just the letter M, not the whole
25 image. Does the letter M look more faded in one

1 Tytell

2 image than the next? That's it.

3 A. Portions of it appear darker on Exhibit
4 2 than on Exhibit 3.

5 Q. Do you have any reason to account for
6 why the M looks darker -- portions of the M looks
7 darker in one exhibit than the other? How do you
8 account for that?

9 A. I would suggest any one of a long list
10 of variables, which I think -- and I think I've
11 been over some of them so far, without being
12 overly redundant, that some of those variables
13 might, singly or in combination, account for the
14 M -- portions of the M appearing darker on the
15 scan from Tytell -- on the image which is page 2
16 of 3 of Tytell 2 when compared to the same
17 portions of the M from the image on page 2 of 5 in
18 what has been marked as Tytell 3.

19 Q. And to be clear, sir, your answers
20 previously were about the letter M in the word
21 "May." I'm not asking about the letter M in the
22 initials MZ; correct?

23 A. Correct.

24 Q. Okay. Now, you did some work for --
25 you did some analysis of the paper thickness in

1 Tytell

2 this case; true?

3 A. Yes.

4 Q. Did you use a micrometer?

5 A. Yes.

6 Q. Do you know if there is an ASTM
7 standard describing the use of a micrometer when
8 measuring paper thickness?

9 A. I'm not sure that's a whole standard
10 all by itself.

11 Q. Does any ASTM standard deal with, in
12 part, the use of micrometer when measuring paper
13 thickness?

14 A. I think there is, for document
15 examination. I would -- well, all right, what
16 kind of ASTM standard?

17 Q. Any kind, sir. Is there any ASTM
18 standard which discusses, in part or in whole, the
19 proper way to use a micrometer?

20 A. Well, there are --

21 Q. (Inaudible.)

22 A. I'm sorry, could you please -- ASTM has
23 a set of volumes of -- of volumes of standards
24 that occupy about half or maybe a third of a
25 floor-to-ceiling bookshelf in the library.

1 Tytell

2 Of those thousands and thousands of
3 standards covering many dozens of different
4 industries, could you be a little specific about
5 what you're talking about?

6 Q. I'm asking if you know of, from memory,
7 obviously -- I'm not assuming you had it
8 memorized -- but are you aware of any ASTM
9 standards, in whole or in part, that deal with the
10 use of a micrometer measuring paper thickness, if
11 you know.

12 A. I know that that is discussed in one of
13 the forensic document examination ASTM standards.
14 And if you want to limit it to that, then I think
15 I am aware of it.

16 Q. Did you follow that standard when you
17 did your micrometer measurements of the two-page
18 "work for hire" document in this case?

19 A. As I recall the standard, it suggests
20 measuring away from the very edge of the page, and
21 it suggests taking multiple measurements. And
22 that is what I did.

23 Q. Did you record your results of those
24 multiple measurements?

25 A. I did.

1 Tytell

2 Q. Do you recall how many measurements you
3 made of page 1?

4 A. No.

5 Q. Do you recall how many measurements you
6 made of page 2?

7 A. No.

8 Q. Did you report those findings in your
9 report to the defendants?

10 A. No.

11 Q. Why not?

12 A. They were not clear-cut.

13 Q. What does that mean, "clear-cut"?

14 A. The unit that I used measures down --
15 it was an electronic readout unit, and it measures
16 down to thousandths of an inch. That would be
17 three places to the right of the decimal point of
18 an inch. And there was some variation where one
19 sheet seemed a little bit thinner than the other.
20 It was not clear-cut when I was measuring at that
21 level.

22 I took into account the appearance of
23 the paper, the condition of the paper at the time
24 that I was measuring it, and I felt that this
25 difference, while it might be a real significant

1 Tytell

2 difference, at the level of measurement I was
3 engaging in and at the -- and given the condition
4 of the paper that it was not enough to definitely
5 say that the two pages were of a different caliper
6 or a different thickness. But it was there, so
7 that I really couldn't say that the pages were of
8 the same thickness.

9 So having sort of equally balanced yes
10 and no, thicker or thinner or the same, I felt
11 that it was appropriate not to report. And -- I
12 mean, this is pretty much what I said at the
13 bottom of page 3, or numbered page 3, which is
14 page 4 of Tytell Exhibit 1, that any limitations
15 of the documents examined were evaluated and,
16 where appropriate, are reflected in the strength
17 of the reported opinion. And here the strength of
18 the reported opinion is such that there was no
19 reported opinion.

20 Q. You said you used an electronic readout
21 unit? What does that mean?

22 A. That the micrometers measure things.
23 And in order to read the measurement, there are
24 several different technologies that have evolved
25 over the years -- over the centuries, really.

1 Tytell

2 One is a Vernier caliper style of
3 micrometer where you turn a knob and then you read
4 marks that are engraved on the barrel that you're
5 turning. This is the oldest style or the most
6 traditional, if you will, style of readout.

7 Then there is a dial readout where you
8 have usually a circular like a clock face with
9 numbers and markings on it and a needle that will
10 move and point to one of the numbers.

11 Sometimes you have two needles like the
12 fancy watches that have a little watch within the
13 watch face. So very often you'll have two
14 different pointers within the dial face of a dial
15 readout. Those are -- would be considered analog
16 units.

17 And then there is the kind of unit I
18 have where you have a little electronic display
19 that gives you numbers, you know, 0.010, 0.003,
20 something like that.

21 Q. Do you feel that your device is more
22 accurate or the same inaccuracy as the other
23 devices you mentioned?

24 A. It depends on the calibration of the
25 given unit. There are units that read out in

1 Tytell

2 tenths of an inch, in hundreds on an inch, and in
3 thousandths of an inch. So each of these units is
4 calibrated to a finer level.

5 This is a standard manufacturer that I
6 feel is accurate at the level of the readout that
7 is provided. It has the advantage of a very long
8 throat so that you can take measurements away from
9 the very edge of the page. But that is just the
10 unit that I've used.

11 Q. Have you reviewed Mr. LaPorte's
12 findings on his micrometer measurements of the two
13 pieces of paper of the "work for hire" contract?

14 A. I haven't -- I don't think I've read
15 his report. I don't know if I've reviewed them.

16 Q. Do you recall seeing any other experts'
17 micrometer measurements of the two pieces of paper
18 of the "work for hire" contract?

19 A. I do think at some point I saw
20 Mr. LaPorte's measurements or become aware of them
21 in some way.

22 Q. Do you agree with what his measurements
23 were of the two pieces of paper?

24 A. As I recall -- and I could not -- I'm
25 not saying that I'm absolutely certain -- I recall

1 Tytell

2 he was using an instrument that was measuring in
3 smaller increments than my instruments. I think
4 one more decimal place to the right -- one more
5 place to the right of the decimal point.

6 And he was able to, therefore, take a
7 more subtle measurement than I was. And therefore
8 he was measuring on a slightly different scale
9 than I was. And if his results accurately reflect
10 a difference that I did not find as clear-cut,
11 then that's the nature of the difference in the
12 scale of the two measuring devices.

13 Q. Do you know if he used his micrometer
14 properly when obtaining his measurements?

15 A. I don't know.

16 Q. Now, as to the ink fade generally, you
17 first noticed, I think your report says, that the
18 ink on the first page -- or on either page of the
19 "work for hire" contract was faded virtually
20 immediately when you first looked at it on July
21 14th. Is that fair to say?

22 A. It's -- I don't know if it's fair, but
23 it's certainly accurate.

24 Q. And you made a scan of both pages of
25 the document pretty soon after you first saw the

1 Tytell

2 document with your eyes that morning; correct?

3 A. Yes.

4 Q. And did you retain the metadata related
5 to the electronic file which results from that
6 scan of page 1 and page 2 that morning?

7 A. Whatever data was saved with the file
8 is still with the file. I have not stripped any
9 metadata. I think that's the technical term. I
10 have not in any way altered the metadata.

11 Q. Did the metadata of that scan include
12 or have embedded in it the settings of your
13 scanner used while you were making the scan?

14 A. I don't know.

15 Q. Do you have any records saved anywhere
16 of the settings for your scanner when it was
17 making the initial scans of page 1 and page 2 of
18 the "work for hire" document that morning?

19 A. It would be the default settings.

20 Q. So do you have a record of what those
21 settings were that morning?

22 A. No.

23 Q. What's the model or the manufacturer of
24 the scanner you used that morning?

25 A. Epson, E-P-S-O-N.

1 Tytell

2 Q. And do you know what model of Epson
3 scanner it was?

4 A. Perfection 500 Photo.

5 Q. Do you know what version of software
6 was being used at the time you did those scans
7 that morning?

8 A. No. It would have been the then more
9 or less current edition of the Epson software for
10 that scanner and for Windows 7.

11 Q. But you don't know the version number?

12 A. No.

13 Q. Do you know if that software has
14 settings on it?

15 A. No.

16 Q. Do you know the model of any of the
17 scanner that Gerald LaPorte used during his
18 examination of the "work for hire" document when
19 he was there in Buffalo?

20 A. No.

21 Q. Do you know the settings for his
22 scanner?

23 A. No.

24 Q. Do you know the software that he used?

25 A. No.

1 Tytell

2 Q. Same question as to the scans that
3 might have been made by Mr. Lesnevich of the "work
4 for hire" document. Do you know any -- do you
5 know the model or the make of scanner he used?

6 A. I do not know for a fact. I think that
7 the scanner looked like a Canon scanner, but
8 that's, you know, like saying a car looks like a
9 Chrysler. It just -- you know, it could be
10 another GM car. I don't know -- no, Chrysler is
11 not a GM car. I'm sorry, I'm a New Yorker; I
12 don't have a car.

13 No, I don't know -- for any of the
14 other people's scanners, I don't know the make,
15 model, software, software edition, or settings.

16 Q. As a result of that -- and this is a
17 hypothetical -- if I gave you a scan of the "work
18 for hire" document from one of those other
19 experts' scanners and gave you the actual
20 electronic file and you brought that up on your
21 computer screen alongside the image of your scan
22 from that morning, if those scans appear visually
23 different, what would be your reaction to that?

24 A. Well, hypothetically that would depend.

25 Q. What would it depend on?

1 Tytell

2 A. A number of features, such as how
3 different are they. If they are --

4 Q. I'll ask a hypothetical. What if your
5 scan of the document, let's say page 1, appears
6 white or slightly off-white but one of the other
7 expert's scans taken during those four days
8 appears yellowed, that same page appears yellowed,
9 what would be your reaction to comparing those two
10 scans from those different experts and different
11 scanners?

12 A. Well, I would be very surprised if
13 looking at any scan taken at any time that day the
14 ink would appear white unless it was taken under
15 infrared luminescence conditions, at which point
16 on the 15th of July we did capture images in which
17 the ink appeared white. But that wasn't a scan;
18 that was a capture of an image from the VSC 400
19 where the ink appeared white.

20 But I'm not aware even of a
21 hypothetical condition where the ink appeared
22 white on any of my scans. I guess there are
23 instances where the ink is so faded it is
24 virtually transparent. So you might consider that
25 as white.

1 Tytell

2 Q. My question was unclear. I'm talking
3 about the overall paper of the document, not the
4 ink, the paper being off-white in your scan and
5 compare it to another one of the other defendants'
6 experts taken a day or two later and the paper of
7 the document now appears discolored, let's say
8 yellow.

9 What would be your reaction to that
10 comparison? Would you agree with me that shows --
11 if that were true, would you agree with me that
12 shows the document became discolored while it was
13 in the expert's possession because of the
14 comparison of the scan?

15 A. Well, you're now asking me several
16 questions. The answer to the last of those
17 questions is no. The answer to the question about
18 what my reaction would be would be not very much
19 because the color of the paper overall is
20 tertiary.

21 The principal issue that I would focus
22 on as a forensic document examiner is the
23 deteriorated condition of the ink. The second
24 feature I would focus on, based upon the facts
25 that were brought forth during the examination on

1 Tytell

2 the morning of July 14th, would be the reaction of
3 the paper to ultraviolet illumination.

4 And I would consider the ultraviolet
5 reaction to be much more significant than any
6 subtle difference in color as recorded on two
7 different scanners, because the very clear and
8 gross difference in ultraviolet reaction is
9 coterminous with the areas of yellowing of the
10 paper and is much easier to see and much more
11 dramatic, very clearly seen in the videos, even,
12 as well as the photographs taken using ultraviolet
13 illumination.

14 So I think that is a much more
15 significant feature to focus on than a subtle
16 difference as seen between two scans from
17 different scanners. So my reaction to any
18 difference, slight difference, in the images
19 recorded on the scanners would be, well, let's
20 take these and equalize them using the appropriate
21 software settings and see if the differences that
22 we're looking at between the scans are apparent
23 differences that are artifacts of differences in
24 the scanners or the scanning settings or if they
25 are real differences that reflect actual

1 Tytell

2 differences in the color of the paper.

3 I would suggest to you that they are
4 much more likely to be the former than the latter.

5 Q. Another hypothetical. If one of
6 plaintiff's experts scanned the first page of the
7 document days later after your examination was
8 done and the ink appeared more vibrant than your
9 scan on the morning of July 14th, what would your
10 opinion be of that comparison?

11 A. Pretty much the same.

12 Q. Meaning what? What accounts for that
13 would be scanner model, make, software settings,
14 et cetera?

15 A. Would you define, please, qualitatively
16 and quantitatively what you mean by "more
17 vibrant"?

18 Q. Well, I'll use your word "faded."
19 Let's hypothetically say the plaintiffs expert
20 scanned page 1 of the document a week after you
21 did on July 14th and that resulting scan showed
22 the ink less faded than how it appears in your
23 scan that you took July 14th.

24 What would be your reaction to that?

25 A. Well, okay, so on July 21st somebody

1 Tytell

2 scanned the document. I'm not sure -- that seems
3 to be contrary to fact, even for a hypothetical,
4 but okay.

5 And in that scan when you say "less
6 faded," do you mean black like normal black
7 ballpoint ink or do you mean a darker shade of
8 yellow or the difference between light tan Chinos
9 and medium tan chinos in terms of tan?

10 Can you be a little more specific here
11 as to how much darker it is? Are we talking about
12 subtle gradations here or are we talking about
13 black versus almost invisible tan or yellow?

14 Q. My hypothetical, sir, is simply that
15 when you look at these two documents side by side,
16 your scan on July 14th and let's hypothetically
17 say plaintiff's expert's scan a week later, to
18 your eye the ink in the plaintiff's expert's scan
19 appears less faded than your scan.

20 So that takes care -- you're saying in
21 your mind when you look at it in your hypothetical
22 that the ink looks less faded in a scan taken a
23 week later, what would your reaction to that be in
24 the hypothetical?

25 Would you conclude your scanner was not

1 Tytell

2 set up correctly or would you conclude that the
3 plaintiff's scanner was not set up correctly?
4 What would you conclude about that?

5 A. I would -- I would start by looking at
6 the quantitative and qualitative level of
7 difference. Your hypothetical is much too vague
8 to really answer properly.

9 Q. Well, you used the word that the ink
10 was faded in your report, did you not?

11 A. Yes. And then I proceeded to try to
12 describe the level of fading, and then I included
13 an image of the faded ink.

14 Q. And in my hypothetical I'm saying you
15 have a scan of that image in front of you where
16 the level of fading was less than what you
17 described in your report. You looked at it
18 yourself, and you said to yourself, Wow, the level
19 of fading of this scan a week later is much less
20 than what appears in my scan.

21 What's your reaction to that?

22 A. Well, first of all, when you say "the
23 level of fading," it's like saying, you know, the
24 level of water in the bathtub. What's the level
25 of water in the bathtub? Is it flowing over the

1 Tytell

2 top or is it barely enough to get the soles of
3 your feet wet?

4 What's the level we're talking about
5 here? If it's a level that would cause me to say,
6 Wow, that's a pretty big level, a wow level, and
7 in my mind's eye I'm really having trouble
8 imagining the level of difference that you want me
9 to imagine. You have to give me the absolute
10 level.

11 Q. Well, we talked about exhibit --
12 comparing the letter M in Exhibits 2 and 3
13 earlier. Let's go back to those exhibits. And
14 assume that Exhibit 2, that scan of the document,
15 was taken after the scan of the first page of the
16 document in Exhibit 3.

17 MR. SOUTHWELL: Mr. Boland, let me just
18 interrupt for one second. At the appropriate
19 time, I'd like to take a comfort recess. You
20 are also at about 3 hours and 15 minutes at
21 this point, just so you know.

22 MR. BOLAND: Let me just finish this
23 little bit, and then we can take a break.
24 That's fine. Just this little area. It won't
25 take long.

1 Tytell

2 A. Can you just repeat that, please?

3 Q. Look at exhibits Tytell 2 and 3.

4 A. Right.

5 Q. And for the hypothetical assume that
6 Exhibit 3 is your scan of page 1 of the
7 Facebook -- the "work for hire" contract. Just
8 assume that.

9 A. Okay.

10 Q. And look at Exhibit 2, page 1 of the
11 scan of the document within Exhibit 2, and assume
12 that that scan was taken later after yours.

13 A. We're on page 2, now, of the "work for
14 hire" document? Oh, no, I'm sorry --

15 Q. We're talking about the portion of
16 either one of these two exhibits that depicts page
17 1 of the "work for hire" document.

18 A. Okay. I'm with you.

19 Q. The page 1 printed in each one of them.
20 Tytell Exhibit 3, assume that is your page 1 of
21 the "work for hire" document, and Exhibit 2,
22 assume that that contained a scan of page 1 of the
23 "work for hire" document that was taken after your
24 scan, like a day later or two days later.

25 A. Okay. And we'll just assume also that

1 Tytell

2 these are actually printouts and unknown number of
3 steps removed from the scans when we call them the
4 scans.

5 Q. Correct.

6 A. Okay.

7 Q. Or just assume they're both printed on
8 the same printer, hypothetically. And I showed
9 these to you and said, Mr. Tytell, how do you
10 account for the fact that the letter M in "May"
11 appears to be not as faded in Exhibit 2 as it is
12 in Exhibit 3.

13 A. Well, the only comment I could make is
14 that -- you're telling me now that Exhibit 3 I am
15 to assume hypothetically is a result of the scans
16 that I made on the morning of July 14th?

17 Q. Yes. You got it.

18 A. Okay. Got it. Thank you.

19 So all I can say about Exhibit 3 is
20 that the scans that I made on the morning of July
21 14th and also on the afternoon of July 14th are
22 true, accurate, fair representations of the
23 condition of the document, of the condition of the
24 ink on pages 1 and 2 as it appeared to me on July
25 14th.

1 Tytell

2 I really cannot account for what might
3 or might not have taken place in the long and
4 checkered history of scans and electronic files
5 which has led to the printout before me as part of
6 Tytell Exhibit 2.

7 Q. Well, assuming that Tytell Exhibit 2
8 was scanned after yours and the ink on the letter
9 M you already said looks a little less faded than
10 yours, how do you account for that? How could the
11 ink have gotten more vibrant over time? Ink
12 doesn't fade the option direction, does it, it
13 gets brighter over time, in your experience?

14 A. I'm sorry, I don't think I used the
15 word "vibrant" or the words "less faded."
16 Perhaps -- perhaps we could look back and see what
17 words I actually used. But I'm fairly sure --

18 Excuse me, sir. Excuse me, Mr. Boland,
19 please, I can't see you, so it's hard to interrupt
20 you properly.

21 I'm fairly sure that those words "more
22 vibrant" and "less faded" are not my words, but
23 you're telling me now they are my words. I have
24 no problem with my words usually, and I know there
25 are many of them. But those I don't believe are

1 Tytell

2 among them in my description of the portion of the
3 letter M on page 2 of 3 of Tytell Exhibit 2.

4 Q. Does the letter M on those two exhibits
5 visually appear the same to you or different?

6 A. I think we went over this at some
7 length previously, and if you would like to go
8 over it again, let's start from the beginning.

9 Q. I'm just asking about the letter M.
10 Does the letter M appear visually to you to be the
11 same between those two? That's all.

12 A. Which letter M?

13 Q. The letter M in the word "May" that is
14 in the interlineation.

15 A. And this is the same question we went
16 over earlier; correct?

17 Q. No. I'm asking you if those appear
18 similar or -- do they appear the same to you or
19 different, the letter M in "May," on those two
20 exhibits?

21 A. Well, the word "same" is kind of a
22 loaded word because no two things are going to
23 appear exactly the same unless they are exactly
24 the same, unless they are -- I'm looking at two
25 different pieces of paper. They're not the same.

1 Tytell

2 One is on my left; one is on my right.

3 So the word "same" here is not, I
4 think, appropriate. Perhaps you could help me out
5 some.

6 Q. What word would you use as an expert to
7 compare two documents like that and look at the
8 quality of the ink or the fadedness or not
9 fadedness -- because you used the word "faded" in
10 your report -- what words would you use to compare
11 the letter M in "May" in those two exhibits?

12 A. Well, in both of the exhibits before
13 me, the letter M in "May" does appear faded, in
14 both of them.

15 Q. So would you say that the letter M in
16 "May" appears faded more or less in one of them or
17 the same, it's faded to the same degree, to your
18 eye?

19 A. Well, you'd have to consider it -- as I
20 said, portions of the M in one appear darker than
21 in the other.

22 Q. In which one does it appear darker,
23 portions of the M?

24 A. The portions of the M appear darker in
25 Tytell 2 than they do in Tytell 3. I believe

1 Tytell

2 that's what I said previously.

3 Q. So let's focus on that, and then we can
4 go to the break here.

5 A. Okay.

6 Q. If hypothetically the scan of this
7 document which resulted in Tytell 2 was -- that
8 scan was taken after the scan that is printed out
9 in Tytell 3, how is it possible that portions of
10 the M appear darker in the later scan?

11 A. Well, if you're telling me that they do
12 appear darker, as part of your hypothetical, then
13 I don't have to deal with whether or not it's
14 possible that they appear darker, because part of
15 your hypothetical setup is that they do appear
16 darker.

17 So the word "possible" is inappropriate
18 in that kind of a hypothetical. Your -- if I
19 could try to clarify, you seem to be asking me
20 that given hypothetically one appears darker --
21 something, some thing, whatever it is, part of the
22 M, part of the R -- if there's an R in there --
23 part of some letter appears darker in one than
24 darker in the other, it's not possible; that's a
25 foundational part of your hypothetical.

1 Tytell

2 Then what are the possible explanations
3 for that hypothetically factual difference. And
4 as far as possible explanations are concerned, the
5 break isn't going to happen until sometime
6 tomorrow morning if you want me to actually list
7 all of those possibilities.

8 Q. Just give me three, the three most
9 likely possibilities that explain why portions of
10 the M appear darker in one exhibit than the other.

11 A. I couldn't evaluate the likelihood of
12 the possibilities. I could give you --

13 Q. Give me the first three to pop into
14 your head.

15 A. The first three to pop into my head
16 randomly, possibly?

17 Q. Sure.

18 A. The printer was out of ink. The yellow
19 reservoir of ink in the cyan, magenta, yellow, and
20 black ink cartridge in the printer, the yellow was
21 exhausted. Or one of the other ink cartridges
22 were exhausted.

23 So I could give you four different
24 reasons by going one ink cartridge after another,
25 and then we could combine maybe two of them are

1 Tytell

2 exhausted and there are two changes to run. Those
3 are well past three different reasons.

4 Q. How about give me a difference that
5 might have been -- that accounts for this that's
6 related to the scanning process.

7 A. Yes, there are differences that could
8 be related that are related to the scanning
9 process, as you are setting up in your
10 hypothetical, hypothetically, yes.

11 Q. So off the top of your head, could you
12 give me two of those, two differences in scanning
13 processes that could account for the ink appearing
14 darker in a later scan of an image -- I mean of a
15 document?

16 A. Scanning settings.

17 Q. Okay. What's one other one, and then
18 we'll go to a break?

19 A. Features of the scanner other than the
20 settings.

21 Q. Like what, for example? What do you
22 mean by that?

23 A. I don't know what could happen.
24 Anything. I'm sorry, I'm sort of -- I'm out of my
25 speculating -- the speculating portion of my brain

1 Tytell

2 doesn't seem to be coming up with any speculation
3 that I can provide to you.

4 Q. Okay. Fair enough.

5 A. I'm out of imagination.

6 MR. BOLAND: Alex, let's go ahead and
7 take that break. How much time do you want?

8 MR. SOUTHWELL: We just need about five
9 minutes. You only have a little less than ten
10 minutes left. We just need to take a quick
11 comfort recess here.

12 MR. BOLAND: Okay. Good.

13 (Recess taken from 2:55 to 3:08.)

14 Q. Mr. Tytell, I neglected to ask you at
15 the beginning, how did you -- how are you charging
16 the defendants for your time working on this case?

17 A. By the hour.

18 Q. Do they have a retainer on account with
19 you or do you just bill them monthly and then they
20 pay the bill?

21 A. I bill them monthly, and I hope they
22 pay the bill.

23 Q. And what's your hourly rate you're
24 charging them?

25 A. \$425 per hour.

1 Tytell

2 Q. Do you have any other type of an
3 agreement with them other than that hourly rate?

4 A. My standard terms and conditions, which
5 have the hourly rate. There was an initial
6 retainer for one day, which was worked off, eight
7 hours. And then there are other conditions in
8 there regarding testimony, such as court testimony
9 or depositions where there is a one-day minimum.

10 And also a standby fee for half a day
11 for standby and a cancellation fee if something
12 happens and I'm not informed three days prior.
13 I'm not sure if it's days or business days,
14 although at this point there are seven business
15 days per week -- we've come to that -- that
16 without three business days' prior notice there's
17 a half-day fee.

18 Q. When you initially got the document on
19 July 14th and noticed some of the differences that
20 we talked about earlier, did you contact anyone
21 from the defendants' attorneys to mention that to
22 them before you continued with your examination?

23 A. Contact them? You mean call them from
24 my cell phone to their cell phone when they were
25 on the other side of the room?

1 Tytell

2 Q. Or just tell them across the other side
3 of the room that you noticed something -- some
4 problem with the document when you compared it to
5 what you saw in the scans? Did you tell them
6 before you continued your examination?

7 MR. SOUTHWELL: Objection, calls for
8 privileged communication.

9 Q. I'm not asking what you said -- well,
10 let me just ask. Did you stop examining the
11 document to have any conversations with anyone
12 when you noticed it was in a different condition
13 than you expected?

14 A. I noticed it, and then I scanned the
15 document front and back, both pages, to make sure
16 that the condition of the document which I had
17 just noticed was recorded.

18 I think in the middle there I did look
19 at the ink of page 1 and page 2 under the
20 stereomicroscope. I did conduct a microscopic --
21 or an examination under the stereomicroscope.
22 This is all within the first, I guess, 20 minutes
23 or 25 minutes after the document was presented.

24 And then after the scanning and the
25 looking at it, I think there was a brief

1 Tytell

2 conversation initiated by Mr. Argentieri. But I
3 was busy looking at the document; so I hope he
4 didn't consider me rude, but I had to break off
5 that conversation.

6 And at that point I left the room, and
7 so did Professor Romano leave the room; and we
8 went to another small conference room. I guess it
9 would be called a breakout room or some term like
10 that. And in that room with Dr. Romano and myself
11 were the attorneys from Gibson, Dunn.

12 And I have a feeling -- I have a
13 feeling I should stop here, but I don't know.

14 Q. You used a VSC machine during your
15 examination; correct?

16 A. Yes.

17 Q. And an employee of Foster Freeman was
18 in the room having conversation with you while you
19 were using that machine; true?

20 A. On which day are we talking about now?

21 Q. Let's say day one, July 14th.

22 A. Okay, July 14th, the answer would be
23 yes.

24 Q. That employee of Foster Freeman in fact
25 set up the VSC machine for your use in that room

1 Tytell

2 that morning, didn't he?

3 A. I believe so.

4 Q. And he sat next to you at times while
5 you were using the computer connected to that
6 machine; right?

7 A. Well, I wasn't actually using the
8 computer connected -- well, "using the computer
9 connected to that machine," that's like saying
10 when you're driving a car you're using the motor
11 connected to the car. The computer was involved
12 in the use of the machine, yes.

13 Q. And at some point during your
14 examination on one of those days, that machine was
15 removed from that office and replaced with a
16 different machine, VSC machine; right?

17 A. There was another VSC machine in use on
18 the 15th, the second day.

19 Q. And the previous machine was taken out
20 of the room?

21 A. I don't recall whether it was taken out
22 of the room or not.

23 Q. And was there something malfunctioning
24 with the machine on July 14th that you started
25 with that had to be replaced with the new machine?

1 Tytell

2 A. The machine on July 14th had to be
3 rebooted on one or two occasions, I think, the
4 computer. Something -- something was problematic
5 there. I don't exactly recall.

6 Q. Did you discuss that with the
7 representative of Foster Freeman, the problems you
8 were having with that VSC machine on July 14th?

9 A. Not that I recall the specifics of.

10 Q. Does that machine have the capacity to
11 project UV -- to project UV light onto a document?

12 A. It has that capacity, although that
13 capacity was not utilized on the 14th, or on the
14 15th -- excuse me, or on the 15th, for that
15 matter.

16 Q. And who are you referring to? It was
17 not utilized by you or nobody utilized that
18 capacity on the 14th and 15th?

19 A. Well, that capacity was not utilized on
20 either the 14th or the 15th while any -- while
21 either page of the "work for hire" document was in
22 a VSC machine on the 14th. And that UV capacity
23 was not utilized on the 15th either, that I
24 recall, but certainly not on the --

25 Q. How do you know that fact? How do you

1 Tytell

2 know that fact?

3 A. Because when the -- when the document
4 was in the VSC machine on the 14th, which was only
5 for a brief -- a relatively short period on the
6 morning of the 14th, I was operating the machine.

7 Q. Do you know how to operate that
8 machine?

9 A. Yes.

10 Q. Was the Foster & Freeman employee
11 giving you some advice on how to set that machine
12 for its use?

13 A. Yes, but that wasn't my first rodeo.
14 I've used that -- the software that controls the
15 various VSC machines of that range, of that
16 system, I've used those machines often.

17 Q. And does the software control the
18 intensity of the light that is projected onto a
19 document that's in the machine?

20 A. No. The software turns on the lights,
21 but the lights -- the intensity doesn't really
22 change once the lights are on.

23 Q. So there's only one setting for the
24 intensity of the light in a VSC machine?

25 A. There are a number of different lights,

1 Tytell

2 a number of different light sources. Well, wait a
3 second. Is there a dimmer? On the white light
4 bulbs, there is a dimmer, and, as I recall, those
5 bulbs are just regular clear light bulbs that are
6 probably less powerful than the light bulb in my
7 refrigerator. I think they are 12 or 13 watt
8 bulbs; they are not even 20 watt bulbs, although
9 there are several of them. But those are just
10 regular white light bulbs, not ultraviolet.

11 Q. Do you own a VSC machine for work in
12 your professional capacity?

13 A. I have two of them, plus the other
14 similar machines that I have built myself, which I
15 have several.

16 Q. You've built VSC machines?

17 A. Well, a VSC machine is a specific form
18 of video -- it's a video camera, essentially a
19 closed circuit video camera. The first ones went
20 to a video monitor. Nowadays you called that an
21 lag kind of video, like television sets used to be
22 year ago.

23 There was a video camera with a silicon
24 target tube that went to a screen, to a small TV
25 monitor. And you had filters in front of the lens

1 Tytell

2 or between the lens and the camera. And I built a
3 number of those one way or another.

4 And I participated in the design --
5 back in the late 1970s, around '78, '79, something
6 like that, I participated in the design of the
7 original Foster & Freeman VSC machine. And I have
8 given them lots of suggestions, some of which they
9 actually acted on, on improvements in the machines
10 over the last two or 30 years.

11 So yeah, I've built a number of these
12 machines.

13 I've actually -- I don't know if
14 Mr. Blanco was there. I did a workshop on
15 building your own video infrared system at a joint
16 meeting of the American Society of Questioned
17 Document Examiners, SAQTE, and SAFDE, Southwestern
18 Association of Forensic Document Examiners.

19 There was a joint meeting in Colorado
20 back a number of years ago where I gave a
21 workshop -- I'm not sure, I think that Mr. Blanco
22 attended that -- on how to build your own VSC
23 system.

24 But we did acquire a VSC machine back
25 in I guess the early eighties. I had worked with

1 Tytell

2 one VSC at the crime lab -- the Israeli crime lab
3 in Jerusalem, one of the very first models. Then
4 we subsequently got our own.

5 Then we upgraded that VSC 1 to a newer
6 VSC 1 sometime in the -- I guess the early
7 nineties. I think that was the same winter as the
8 first World Trade Center bombing. That's sort of
9 the way I keep track of time, unfortunately.

10 And then we -- and then since then I
11 have also, just as we had in Buffalo, arranged for
12 Foster & Freeman to either bring a VSC unit,
13 whatever their current state-of-the-art unit was,
14 to a location to where I would be working with
15 documents or, alternatively, to bring the
16 documents to Foster & Freeman's U.S. office where
17 I would work with their big machines, like the VSC
18 6000.

19 And actually in I guess 2009, in the
20 fall of 2009, I spent a week with a VSC 400 on a
21 location in Washington, D.C., where I got to use
22 that machine. And various other times.

23 So I am familiar with the equipment.

24 MR. SOUTHWELL: Mr. Boland, we're now
25 past three and a half hours.

1 Tytell

2 MR. BOLAND: Okay. We've got a little
3 bit more to go.

4 MR. SOUTHWELL: All right. Hopefully a
5 very little bit. Go ahead.

6 Q. Mr. Tytell, do you know what bulbs were
7 in that VSC machine, the first one that was
8 delivered to the law firm's offices?

9 A. I only know that the white light bulbs,
10 which is what was used most of the time, were the
11 regular bulbs, the 12 or 13 watt bulbs.

12 Q. How do you know that?

13 A. Well, that's what's in the specs. I
14 didn't actually look under the hood and check that
15 the bulbs that were in there were the bulbs that
16 were in the specs.

17 Q. Are those the only bulbs that can fit
18 in that machine, the ones that are in the specs?

19 A. I don't know. I don't know what kind
20 of sockets they use.

21 Q. How about the replacement machine that
22 came later, whenever that was, when the first one
23 got hauled away, do you know what bulbs were
24 inside of there?

25 A. Well, I don't know that the first one

1 Tytell

2 was hauled away. And the second machine that was
3 used on the 15th, the white light bulbs there I
4 believe are the same specification. But again, I
5 did not --

6 Q. Did you look under the hood?

7 A. Again, I did not check under the hood
8 to see if they had anything different there. But
9 these are generally -- because of the sensitivity
10 of the camera, these bulbs are really only very
11 low wattage.

12 I mean, a one AAA battery pocket
13 flashlight, the kind that you have on your key
14 chain, that is more than powerful enough for most
15 of the kinds of examinations that are done with
16 the whited light bulbs.

17 Q. Do you agree with some of the other
18 experts in this case that have said that on the
19 day you got this document, July 14th, not only did
20 the ink appear faded, which you have stated, but
21 that the document appeared discolored? Is that
22 your opinion as well, that the document appeared
23 discolored?

24 A. Could you define "discolored," please?

25 Q. The common terms some of the other

1 Tytell

2 experts are using was "yellowed," the document was
3 yellowed from how it appears in the Aginsky scan.
4 Do you agree with that?

5 MR. SOUTHWELL: Objection,
6 mischaracterizes.

7 A. Well, I don't know about other experts'
8 opinions and agreeing with them or not. I do know
9 that when I -- among my observations on July 14th,
10 including the faded nature of the ink and the
11 ultraviolet reactions, was the cream color -- or I
12 guess "yellowish" would be an okay term -- cast of
13 the front of the paper fairly uniformly on both
14 pages, with the exceptions of the tabs at the top,
15 which were white by contrast to the yellow, and
16 then, as I mentioned, the top corner of page 1
17 within the area delineated by the crease of the
18 fold.

19 Q. Is it your opinion that the yellowing
20 of the tabs of the document that you saw and the
21 ink fading are related?

22 A. Well, they're concomitant, for sure.
23 And the yellowing or the cast, as I mentioned
24 previously, are coterminous with the areas of
25 unusual lack of fluorescence or presence of normal

1 Tytell

2 fluorescence.

3 Q. My question is do you think that the
4 same process that caused the ink to fade is also
5 the process that resulted in the yellow cast, as
6 you put it.

7 A. Things tend to point that way, yes.

8 Q. Now, the forensic business you run now
9 you took over from your parents; is that true?

10 A. I'm not sure I took over their
11 business. There was a separate -- you know,
12 Tytell Questioned Document Labs was my mom's name
13 for doing business, and I had a name Forensic
14 Research. But it is certainly their practice that
15 I have stepped into.

16 Q. And would you say your parents were
17 pretty highly regarded in this field when they
18 were running their business?

19 A. Certainly by me.

20 Q. I mean by the professional -- their
21 peers.

22 A. I would hope so.

23 Q. And did they have government agencies
24 who hired them to do work on cases?

25 A. My mother certainly -- she was much

1 Tytell

2 more active over the long haul, and my mom
3 certainly appeared numerous times on behalf of the
4 government, the U.S. attorney's office, in cases
5 like the pizza connection or the case of the
6 government -- the United States versus the
7 Reverend Moon, cases like that.

8 Q. Have you retained those sort of same
9 government contacts with your business that you're
10 running now?

11 A. Not the same contacts. I think she
12 worked much more in the Southern District than I
13 have. I have appeared a number of times on cases
14 brought by the U.S. attorney's office in the
15 Eastern District but also on some cases brought by
16 the U.S. attorney's office in the Southern
17 District or in the District of New Jersey, and one
18 a while ago in the Northern District of New York
19 and in Vermont.

20 Q. Go ahead.

21 A. U.S. attorney's office in Vermont. But
22 that was an attorney who had gone from Eastern
23 District of New York to district of Vermont.

24 Q. Have you ever done any work for the
25 CIA?

1 Tytell

2 A. Well, I just finished a case for the
3 U.S. Department of State, and their legal counsel
4 is in the offices that were formerly occupied by
5 the CIA in the U.S. navel observatory in
6 Washington.

7 But cases for the CIA is -- I don't
8 think I've ever gotten a paycheck that said CIA on
9 it or U.S. Treasury re CIA work. I think that
10 would be a fair statement.

11 Q. Have you ever done any work for the
12 CIA, no matter who paid you?

13 MR. SOUTHWELL: Objection to relevance.

14 A. I just don't know how to answer.

15 Q. It's "yes" or "no." That will do.

16 A. I think I would have to respectfully
17 decline to answer.

18 Q. Did your parents ever work for the CIA?

19 MR. SOUTHWELL: Objection to the
20 relevance. What's your point here,
21 Mr. Boland? You're over your time, and now
22 you're asking questions about Mr. Tytell's
23 parents' work? I mean, come on.

24 MR. BOLAND: I am.

25 MR. SOUTHWELL: What's the relevance?

1 Tytell

2 MR. BOLAND: Did your parents ever work
3 for the CIA, that's a pretty simple question.

4 MR. SOUTHWELL: What's the relevance of
5 that?

6 MR. BOLAND: I heard your objection.
7 The witness needs to answer the question.

8 MR. SOUTHWELL: You can answer one more
9 of this.

10 A. Okay.

11 MR. SOUTHWELL: To the extent you can.

12 MR. BOLAND: I object to that on the
13 record. He can answer whatever question he
14 needs to answer, according to the rules. So
15 that's it.

16 A. Well, then, let me ask you -- you
17 mentioned the rules. I don't know what the rules
18 are. But let me ask you for some clarification,
19 if I might. What do you mean by "work for the
20 CIA"?

21 Q. Were they ever employed by that agency?
22 That is one way of looking at it.

23 A. Okay. As employees they were never --

24 Q. Yes.

25 A. Well, during World War II there was a

1 Tytell

2 predecessor agency to the CIA. The CIA didn't
3 exist until sometime a couple years after World
4 War II. So let's stick with the CIA. And I think
5 I can safely say, no, my parents did not work for
6 that agency.

7 Q. Are you aware of any ASTM standards
8 relating to ink age determination?

9 A. No.

10 Q. Do you know why there isn't any of
11 those standards, if you know?

12 A. They haven't been written yet.

13 Q. Do you know if there's agreement
14 amongst experts in the field of ink age
15 determination as to a standard approach to making
16 those -- to doing that analysis, if you know?

17 A. I don't know.

18 Q. In the occasions where you participated
19 in writing or drafting ASTM standards, do you
20 recall questions about that?

21 A. I don't recall any questions about
22 that.

23 Q. Okay. Have you ever been involved in
24 drafting ASTM standards?

25 A. Ah, yes, I recall a question along

1 Tytell

2 those lines. The answer is yes.

3 Q. And if someone wants to get a new
4 technique standardized, how do they go about that?

5 MR. SOUTHWELL: Objection to the form.

6 A. If somebody wants to get a new
7 technique or an old technique or a middle-aged
8 technique put into the format of an ASTM standard,
9 that individual would first have to write a draft
10 standard, hopefully in the appropriate stylistic
11 form as laid out in the ASTM standard -- they have
12 a book.

13 They call it the blue book. I think
14 "blue book" is a word lawyers also use. There's
15 an ASTM blue book that gives you the styling of
16 number of paragraphs and so on.

17 And you draft up your standard, and
18 then you put it through the appropriate
19 subcommittee and the appropriate committee. The
20 first step is that somebody or some group of
21 people have to write a first draft.

22 There are a lot of documents that need
23 to be written for every field. There are a number
24 of drafts for questioned document standards that
25 have been written that are -- that never made it

1 Tytell

2 into the ASTM process just because of the logjam,
3 you know, the throughput, how many standards can
4 the ASTM appropriate committee handle in a given
5 time period.

6 But that is the process one would
7 follow for any kind of a method or procedure,
8 whether it's new, old, or in between.

9 Q. So before we come to an ASTM, the
10 relative folks in the field would have to agree
11 upon a method or methods; true?

12 A. Before those folks would have a chance
13 to agree, somebody would actually have to write up
14 a draft. The first step is to sit down and write
15 a draft of the procedure that you would like
16 everybody else to look at and decide whether or
17 not they agree with. You need to start with a
18 draft of the standard.

19 Q. And then once that draft goes around to
20 the relevant experts, if they can't agree on what
21 the standard ought to be, it's true you can't
22 reach -- then an ASTM standard will never be
23 established?

24 A. Well, you were asking about age of ink,
25 and age of ink has never gotten to the point of

1 Tytell

2 the draft. So I have no clue what might happen if
3 that were to be circulated among the appropriate
4 people. You have to have a little fact somewhere
5 in the hypothetical. This one lacks it.

6 Q. I'm just talking about ASTM standard
7 approach in general, not ink age determination.
8 In general if you can't get relative people in
9 the --

10 (Unintelligible discussion interrupted
11 by the reporter.)

12 Q. If you can't get people in the relevant
13 field to agree on a method, then you can't create
14 an ASTM standard; is that true or not?

15 A. That is incorrect.

16 Q. Can a single person draft a proposed
17 ASTM standard and somehow get it incorporated into
18 the ASTM manual by themselves without agreement of
19 other people?

20 A. A single person can draft a standard.
21 There's no problem. And many standards have been
22 drafted by one person who just feels like drafting
23 it. That standard then has to achieve a certain
24 level of agreement. It does not need to achieve
25 unanimity.

1 Tytell

2 A consensus standard requires a
3 consensus of the people who get to vote on the
4 standard. This voting population may not
5 represent the entire population of people of --
6 who are interested, although it ought to. And it
7 does not require unanimity.

8 If somebody has an objection that they
9 put forth and it's a valid objection, then usually
10 the standard gets -- or the draft document gets
11 modified. Somebody comes up and says, Gee, this
12 is wrong and here's why; and everybody goes, Oh,
13 my, we hadn't really thought of that, thank you
14 very much, we'll fix it. Things get changed. And
15 that happens quite often.

16 If, however, somebody just digs in
17 their heels and have a particular position and
18 say, I don't like this, I think this is wrong,
19 full stop, and two-thirds of the people who are
20 voting on it say, We appreciate your interest, but
21 we think that you're not correct in your
22 objection, then the standard moves forward.

23 So if one person writes a standard and
24 one person can explain why that standard is
25 correct and modify, where appropriate, and defend

1 Tytell

2 where objections are wrong, then yes, that one
3 person can shepherd a draft document through the
4 entire ASTM process and see it eventually included
5 in the volumes of ASTM standards.

6 Q. I guess what I'm saying is you have to
7 have, somewhere along the line after a draft is
8 made, at least a majority of people in the
9 relevant field have to agree on a standard before
10 it becomes a standard. Fair enough?

11 A. Well, the majority of people who are
12 involved in the subcommittee and the committee
13 dealing with the standard have to agree, not just
14 a majority but usually two-thirds. Sometimes it
15 is a simple majority, yes.

16 But the first thing that's required is
17 somebody has to commit the idea to I would like to
18 say paper but I would say has to commit the idea
19 to electronics, has to draft a document that could
20 be circulated. And if you don't draft the
21 document, then everything after that is completely
22 moot.

23 Q. Do you own Photoshop, the photo editing
24 software?

25 A. I do.

1 Tytell

2 Q. Do you use it in your work?

3 A. I have been using it recently.

4 Q. When did you start using it in your
5 work?

6 A. Sometime I guess in the last six
7 months.

8 Q. Have you used any photo or digital
9 image editing software before Photoshop?

10 A. Yes.

11 Q. What was the name of it?

12 A. Oh, there were several. There's a very
13 useful program that Nikon has I think -- I'm not
14 sure if it's Picture Capture. It is a software
15 that you can get with the newer Nikon digital
16 cameras. I have been using it with the D70, the
17 old D70, and now the D90.

18 Prior to that software, there was a
19 software -- it seems antique now -- called Picture
20 Publisher. I believe that came from a company
21 called Micrografx, M-I-C-R-O-G-R-A-F-I-X, I
22 believe. And they used to be down in Texas. They
23 have gone, but that was a great software program
24 for the kind of work we do: overlays and so on.
25 I would still be using it except that it won't run

1 Tytell

2 on a 64-bit machine.

3 Then there's another program called
4 ImageJ -- Image and then a capital J at the end --
5 which I think was developed by the -- either the
6 National Institutes of Health or the National
7 Academies of Science. And I think that's what
8 people call freeware. And I have used that some
9 in the past over the last, say, I don't know, four
10 or five years, maybe.

11 Q. Have you reviewed any of the images you
12 captured in this case using any of that kind of
13 image-editing software?

14 A. Yes.

15 Q. Did you keep records of any changes you
16 might have made to the images in that software?

17 A. Well, I -- as with any enhancement of
18 images to bring out details that might not be
19 readily available on the surface. You never
20 change the original image. You are always working
21 with copy images.

22 So when you ask if I've kept any record
23 of changes I have made to the images, there have
24 been no changes made to the original I guess you
25 would talk about native files.

1 Tytell

2 Where I have been using the Photoshop
3 software, I believe there is a feature there
4 called history which is always turned on so I can
5 go back and look at step by step what adjustments
6 have been made. And that is sort of the record
7 that would be kept. And also I would save the
8 images as I go so I could look at the images.

9 But I haven't done anything that's
10 really that compound/complex that it couldn't be
11 redone in real time in a matter of a couple of
12 minutes. Actually that's not true. Some of the
13 overlays -- some of the overlays require some
14 adjustments. But the kind of adjustments to
15 levels or brightness and contrast, those are
16 really very basic.

17 A lot of these adjustments are pretty
18 much the kind of adjustments that we used to do to
19 television pictures when they had knobs on the
20 front of televisions. I don't know if you're old
21 enough to remember that, sir.

22 Q. I am.

23 A. Okay. Well, you remember brightness
24 and contrast knobs on the front of the black-and-
25 white TVs, if you're that old.

1 Tytell

2 Q. Yes.

3 A. Then when we got to color TVs, you had
4 adjustments for tints and things like that. Those
5 are pretty much the same adjustments that at least
6 in this case bring out the significant details of
7 the images.

8 For instance, using those kinds of
9 adjustments, just brightness and contrast, you can
10 take a look at the scans taken at 9:18 a.m. and
11 see the two tabs at the top of page 1. You can
12 use those simple adjustments, the kind that used
13 to be on the old television sets, and see the
14 darkened triangle on the reverse of page 1.

15 So, you know, it's nice to have these
16 wonderful software tools, most of which use
17 algorithms originally developed by NASA 30 or 40
18 years ago. But it's nice to use all of these
19 things, but the adjustments themselves are really
20 very basic.

21 Q. Did you produce your report to the
22 defendants in a PDF format?

23 A. Did I produce my -- well, produce. I
24 sent it to them as a PDF, yes.

25 Q. And do you know what they did, if

1 Tytell

2 anything, to that report before submitting it as
3 part of an exhibit to their motion to dismiss?
4 Did they change it in any way, if you know?

5 A. I do not know.

6 Q. Do you know how the quality of the
7 image that -- the images included in your report
8 as it was filed with the court compare to the
9 quality of those images as you have them on your
10 copy of the report in your office?

11 A. No.

12 Q. Have you provided to the defendants the
13 electronic files of all the images that are
14 included in the PDF document that you eventually
15 sent to them?

16 A. Well, since I've given them all the
17 images that I took, that would include the
18 start-up set of images which were included in the
19 report.

20 Q. And do you have copies of all those
21 images still in your office?

22 A. What do you mean by "copies of the
23 images"? Oh, I --

24 Q. Do you have scans in electronic file
25 format in your office?

1 Tytell

2 A. Well, in my office, yes. I have also
3 on backup external hard drives the scans and the
4 photographs or the images that were acquired with
5 the scanner, the images that were acquired with
6 the digital Nikon -- the Nikon digital camera, and
7 the images that were acquired using the VSC 400.
8 All of those files I have the originals of the
9 native format files of everything, and so does
10 counsel for defendants.

11 Q. And did you save the adjusted versions
12 of those images? You know how you were talking
13 about contrast and all that. Did you save those
14 versions of the images as well?

15 A. Yes, in different file folders in
16 completely different folders from the original
17 images, of course.

18 Q. Did you give the defendants' lawyers
19 those adjusted images, copies of those adjusted
20 images?

21 A. I think I have sent PDF files of some
22 of those to the attorneys for the defendants.

23 Q. And as part of producing your report in
24 this case, did you review some images, if you
25 know, that were obtained from the plaintiff's

1 Tytell

2 expert?

3 A. Yes, I did. Yes, I did. Excuse me,
4 let me back up. Excuse me, Mr. Boland. Can you
5 please define "plaintiff's experts" for me?

6 Q. Larry Stewart, did you review some
7 images that you understood came from him and his
8 scanning or imaging work of the document?

9 A. Yes.

10 Q. Jim Blanco, did you review some of his
11 images?

12 A. Yes.

13 Q. John Osborn?

14 A. Yes.

15 Q. And Mr. Aginsky?

16 A. I believe it's Dr. Aginsky, and yes.

17 Q. And Mr. Speckin, does that ring a bell?

18 A. Erich Speckin rings a bell, and I
19 believe that there are images that were acquired
20 by Mr. Speckin on his VSC equipment in I believe
21 Chicago on July 25th.

22 And as I -- it's just my recollection
23 from the video. I think that Mr. Stewart was
24 standing at his elbow, if you will, when they were
25 acquired. And those images are attached as

1 Tytell

2 Exhibit C to my report, and that would be pages
3 21, 22, 23, and 24 of document 330, which is
4 Tytell Exhibit 1.

5 That's why I know what they were. I've
6 got them sitting here. Those, I believe, are the
7 Speckin images, or among the Speckin images.

8 Q. Let me clarify something. The adjusted
9 images that you made of the scans, did you or did
10 you not provide those to defendants?

11 A. Some.

12 Q. Counsel?

13 A. Some, some of them.

14 Q. You did? Okay. Oh, some. You said
15 you provided some of them. Do you know which ones
16 you provided to them?

17 A. Let's see. Yes, I do.

18 Q. Can you describe which adjusted images
19 you provided to the defendants?

20 A. I provided defendant with images
21 showing split channels in CYMK mode and split
22 channels in RGB mode. And some of those kinds of
23 images with brightness and perhaps contrast
24 adjustments.

25 That is what I recall at the moment.

1 Tytell

2 Q. And which images -- I understand the
3 types of adjustments that were made to those
4 images. I'm saying which images, adjusted
5 versions of images of page 1 of the "work for
6 hire," page 2 of the "work for hire," the
7 specification agreement, what images did you
8 adjust and then send to them?

9 A. Pages 1 and 2 of the "work for hire"
10 document, images taken from the specification
11 document that had portions cropped to illustrate
12 line quality of the signature of Mr. Ceglia. I
13 think I may have used those images, but they were
14 not necessarily adjusted.

15 Q. Did you use any of those adjusted
16 images in your report that you filed along with
17 the motion -- not that you filed but that the
18 defendants filed along with the motion to dismiss?

19 A. I don't believe so.

20 MR. SOUTHWELL: Mr. Boland, we're now
21 at four hours. Are you almost done here?

22 MR. BOLAND: Yeah.

23 Q. What's your basis for that belief,
24 Mr. Tytell?

25 A. Exhibit Tytell 1.

1 Tytell

2 Q. You're saying you reviewed that exhibit
3 or you reviewed your report since it was filed and
4 that's your basis for your belief that none of
5 your adjusted images are in your report?

6 A. Not since it was filed. But again it's
7 unfortunate that we can't see each other or are
8 sitting next to each other. But I'm looking at it
9 right now as Tytell Exhibit 1.

10 Q. Right.

11 A. And on page 4 there are two images in
12 reduced size of the scans from Exhibit -- of page
13 1 and page 2. And those are just -- those images
14 were dropped in.

15 On page 7 -- excuse me, on page 5,
16 there are cropped portions of those same images at
17 life-size. They were cut out, but they were not
18 adjusted in any way.

19 Similarly, on page 6 there are images
20 from my scans and from Dr. Aginsky's scans. You
21 had referred to those earlier. They were just cut
22 out and dropped into the Word file, into a table
23 in Word.

24 On page 7 and page 8, there are
25 pictures showing the UV fluorescent

1 Tytell

2 characteristics. Those are the images. I am not
3 sure if they are cropped or not, just so they
4 would fit into the format. But those have not
5 been adjusted in any way.

6 Then finally on page 10 there is an
7 image that was taken from the VSC 400 that is just
8 that image as it was captured on the VSC 400.
9 That's dropped in.

10 And then on page 11 there's the name
11 Paul Ceglia from page 1 and the name Paul Ceglia
12 from page 2. They are larger than life. But
13 those images are just cropped from the two scans
14 at page 1 and page 2.

15 And there I think on the picture of the
16 Paul Ceglia from page 2 on that cropped part of
17 the scan, because it's enlarged, you can see the
18 fading of the ink.

19 And actually, I don't know if you have
20 a copy of that document there, but if you take a
21 look at my report of March 25th, 2012, filed March
22 26, document 330, now Tytell 1, if you take a look
23 at page 10 and you look at the right-hand Paul
24 Ceglia image from page 2 of the paper "work for
25 hire" document, you'll notice that there are three

1 Tytell

2 places where you can see ink.

3 And the ink that goes through the final
4 letter of Ceglia, the last A, and the ink to the
5 right of the comma following the name Ceglia,
6 those are what I was calling a light tan, as I see
7 them on this printout.

8 However, if you look at the bottom of
9 that image below the capital C, just above the
10 printed letter M in the word "document," you'll
11 see a bit of the top of I believe it's the capital
12 P in Paul or the first letter of the signature.
13 And you will see that that is quite a bit darker.

14 So even within the same writing there
15 are differences. There is variation in the
16 lightening of the ink: one brown, the other tan.
17 And brown and tan, if you go to proper color
18 science, they'll tell you that these color names
19 are just names of convenience, that brown and tan
20 and all of that is a dark yellow-orange or a dark
21 orange. But that's another story.

22 So yeah, those are images. They were
23 not adjusted in any way except to be enlarged
24 slightly and dropped.

25 And then finally the image, which is

1 Tytell

2 not one of mine, of the staple on page 12, that
3 comes from the mid 2010 image of that version,
4 that electronic version, of the TIFF file attached
5 to the e-mail from Mr. Ceglia to Mr. Argentieri.

6 So my answer as to whether or not any
7 adjusted images were used in my report is based
8 upon looking through the copy of -- or what you
9 have represented to me is a copy of my report
10 which is currently marked as Tytell 1.

11 Q. We talked before about your -- you
12 don't have any liability coverage for your work on
13 cases, especially this case; true?

14 A. I don't know why you say "especially
15 this case."

16 Q. I'm asking about this case. You didn't
17 have -- you don't have any liability insurance
18 covering your work on this document?

19 MR. SOUTHWELL: Objection, asked and
20 answered.

21 MR. BOLAND: Okay.

22 Q. Suffice it to say, sir, if during the
23 course of your handling of this document you
24 damaged it it would be potentially bankrupting to
25 you financially?

1 Tytell

2 A. Well, that's a question that would be,
3 I consider, contrary to fact because if you
4 consider the fading of the document and the
5 yellowish cast of paper of the color of the paper
6 of the two pages of the document -- let's say the
7 fading of the ink, the discoloration of the paper,
8 the tab marks that don't -- that do luminesce at
9 the top of the page and the concomitant
10 indentations that go with those tab marks, which,
11 by the way, could not really have been made by a
12 finger, whether it was contaminated. But there
13 are indentations there that are not at all
14 consistent with being made by an object shaped
15 like a person's finger.

16 Q. Sir --

17 A. Excuse me, sir. Let me answer. If
18 you're referring to those things as damage, they
19 were damaged before I actually got to see the
20 document.

21 So whether -- I don't really understand
22 how I might have damaged a document which came
23 predamaged.

24 Q. No, my question is if you did damage it
25 somehow during its analysis and the document is

1 Tytell

2 worth half of whatever Facebook's worth, that's
3 going to bankrupt you. That's my point.

4 MR. SOUTHWELL: Objection. This is
5 harassing at this point, Mr. Boland. This is
6 a ridiculous question.

7 A. I suppose that might depend on whether
8 or not the document -- any so-called damage would
9 have any actual significance, given the nature of
10 the document, although I don't really see that
11 there was in fact any actual damage of any kind of
12 significance at all during the two days that I
13 spent with the document.

14 Q. Finally, you mentioned something about
15 printers before. I want to ask a couple last
16 questions about that.

17 Is it true that if two documents -- if
18 a document on your screen is printed, two copies
19 of it are printed from the same printer, will
20 those generally -- those documents be the same,
21 they will look -- they will appear the same?

22 A. Well, you know, the word "the same" --
23 you mentioned ASTM standards in the past over the
24 course of our question and answer today, and if
25 you look at one of the ASTM standards that

1 Tytell

2 discusses this concept, you'll see that the term
3 "the same" -- "the same," close quote -- is a term
4 that is discouraged when comparing two things in
5 the forensic field.

6 And this goes back -- this borders on a
7 philosophical point that no two things are the
8 same, no two things are absolutely, totally
9 identical at the most minute level. And indeed,
10 there's a philosophical point that no object is
11 the same as itself over time. And the ancient
12 Greek wisecrack of the philosophers is you can
13 never swim in the same river twice.

14 So the Exhibit Tytell 1 that was handed
15 to me this morning and has done very little but
16 sit in front of me and be open from time to time
17 is not the same as it was when it was originally
18 marked.

19 So to say the two printouts are going
20 to be the same, besides being the wrong
21 terminology, is almost a philosophical
22 oxymoron.

23 So perhaps if you would say is it
24 possible, given the proper conditions with the
25 proper printer, that they might be

1 Tytell

2 indistinguishable at a certain level of analysis,
3 yes. But that depends on what level of analysis
4 you're talking about.

5 If you take two documents printed out
6 or two pages -- you have a one-page document on
7 your screen. You go to the "please print," and
8 you say print me two copies and it -- the machine
9 hums and two pieces of paper come out of the
10 printer in compliance with your request to your
11 computer and you then take those two pieces of
12 paper, if you glance at them, they may look to be
13 indistinguishable.

14 If you examined them down to a very
15 minute level, you probably would find numerous
16 differences between them if for no other reason
17 than the paper they're printed on, because paper
18 is a random matting, felting, of different fibers.

19 And if you go to -- you pick out a
20 particular comma in the text, if it's a text
21 document, and you look at the way the paper fibers
22 are meshed in the area immediately above that
23 comma, you will see that they are, under
24 magnification, entirely different from one page to
25 the other.

1 Tytell

2 So when you say wouldn't the two pages
3 be the same, the answer is what do you mean by
4 "the same."

5 Q. I mean in the sense -- and, you know --
6 I'm sort of reluctant to ask the question again
7 because I ask what I seem to be a simple question
8 and I get paragraphs. That's one of the reasons
9 we go on so long here.

10 We talk about comparing images scanned
11 from two different scanners, and you pointed out
12 reasons why that comparison would not be valid.
13 Do you recall those questions?

14 A. I don't recall pointing out why the
15 comparison would not be valid under any
16 circumstance, no.

17 Q. You said things like scanner settings
18 can change the resulting image that you scan,
19 depending on the settings of the scanner. Do you
20 remember that?

21 A. Well, I would agree that scanner
22 settings can change the image of the scanner.
23 That's what the nature of settings is, that they
24 can change the resultant image, at a certain
25 level.

1 Tytell

2 Q. And you talked about the levels of
3 different colors of ink. I think you mentioned
4 cyan at one point in a printer can change the
5 resulting output that comes out of that printer.
6 Do you remember that?

7 A. I remember mentioning cyan. I think --
8 I didn't say the different level. I said if the
9 computer were -- if the printer were out of cyan.
10 I guess that would be a level. Zero is a level.
11 I think we were discussing levels of difference in
12 appearance when I used "levels."

13 I think with cyan -- perhaps we should
14 just look back to the record rather than relying
15 on my recall. But I don't think you're
16 characterizing my answers correctly.

17 Q. My point is if the same document is
18 printed out of two different printers and those --
19 the way that document appears to your eye, you see
20 some differences, like a text or different yellow
21 text, for example, or one has what appears to be
22 ink that's more faded than the other, those could
23 easily be a result of those two different printers
24 and how they have output that document; true?

25 A. If you see differences that are

1 Tytell

2 attributable to the printer are the differences
3 that you see attributable to the printer.

4 Well, it's kind of a circular question.
5 I think the only possible answer is yes.

6 Q. No, my question is you just see
7 differences in the document. One has some ink
8 that appears more faded than the other. You don't
9 know how it happened. Someone just gave you two
10 documents. They look identical as far as their
11 text and the writing except one of them looks a
12 little more faded than the other. The person
13 tells you, Oh, by the way, they were printed on
14 two different printers.

15 A. Wait a minute. Back up. You're
16 talking about getting two different documents, not
17 two different images of the same document.
18 Because if you get two different documents that
19 were printed on the same printer, to me that means
20 that you have the same words that were printed out
21 on two different printers and then as documents
22 they may have been separately executed.

23 So you're actually -- could you please
24 be a little more --

25 Q. Yeah, that's not what I'm saying. I'm

1 Tytell

2 saying the identical electronic file printed on
3 two different printers. And then you're handed
4 the output of those two different printers, and
5 they appear visually to you to be different,
6 meaning one has a yellow cast, one the ink looks a
7 little faded compared to the other. Okay? That's
8 the hypothetical.

9 Obviously one of the causes for that
10 could be differences in how printers output
11 documents. That's one of the potential reasons
12 they look different; true?

13 A. Well, I think you used the word
14 "obviously" in your question, so it's kind of a
15 foolish thing for me to deny the obvious.

16 But -- so you're suggesting that if the
17 same file is on my computer screen and somehow my
18 computer is linked to two different printers are
19 these two different printers two different -- like
20 one is a color laser printer and the other is a
21 color ink jet printer and I tell the file to go
22 print one on the laser color printer and the other
23 on the color ink jet printer and the results look
24 different might the difference be due to the fact
25 that two different printers are involved? That

1 Tytell

2 would be one potential answer.

3 Another potential answer could be the
4 settings. When you have a print screen in front
5 of you, up -- do you use Microsoft Word at all?

6 Q. Sir, you've answered the question, and
7 that's fine. I'm just -- I was just talking about
8 what -- if two different printers are used to
9 print the same document that the resulting output
10 could look different because of the printer. And
11 is that true?

12 A. That would be one of the possible
13 reasons, yes.

14 Q. Okay. Also the settings on -- the type
15 of computer used and the software used on the
16 computer could cause some differences in the
17 output of those two different printers. Is that
18 possible as well?

19 A. Well, if you -- if you send -- let's
20 eliminate the second printer. Let's go with one
21 printer. If you have software and you tell the
22 software I'd like to readjust the entire way that
23 I want this document to look, like, for instance,
24 I'd like to print a two-page document so that it
25 all fits -- I have two pages on one piece of

1 Tytell

2 paper, one side of the piece of paper, and then
3 the other one I say, no, just one page to one
4 page, it's going to look differently. You have
5 adjustments that you can make to the printer
6 preferences button in, for instance, Microsoft
7 Word.

8 Now, I know -- so yeah, you can do any
9 number of things that would make two things look
10 different.

11 If you want to ask me about 11 other
12 things that you know could possibly make things
13 look different, okay, fine, let's go.

14 However, the problem is that when we
15 get back to the images taken of the "work for
16 hire" paper document in the first 20 minutes that
17 it was available for examination on the morning of
18 July 14th, none of this is at all relevant,
19 because the appearance of the document as I saw it
20 was that the ink was faded and the paper was
21 slightly yellowed and that that appearance, as I
22 saw it, was fairly and accurately represented by
23 the scans that I captured at 9:18 a.m. or the
24 files are marked 9:18 a.m. and 9:22 a.m.

25 And you can see the scans being taken

1 Tytell

2 in the video beginning at 9:15 or so on the video
3 clock at the bottom of the screen. That records
4 that the document was I believe your term is
5 damaged when it got there in the morning. So that
6 is all documented.

7 The appearance of the ultraviolet
8 phenomena is visible on the video around 11 a.m.
9 It was documented thoroughly later that day around
10 I guess 5 p.m., which was the next time that a UV
11 light was turned on, and all of that was
12 documented and visible on the video by around 5
13 o'clock that afternoon.

14 So whatever happened that caused that
15 difference in the UV was thoroughly documented and
16 thoroughly visible as early as less than two hours
17 after Mr. Argentieri took the documents out of the
18 envelope.

19 And the white appearance of the tabs at
20 the tops of the two pages and the dark appearance
21 of the triangle on the reverse of page 1 are
22 apparent in the scans taken within the first 25
23 minutes or so of the documents being available for
24 examination on the morning of the 14th with the
25 kinds of basic adjustments that you and I used to

1 Tytell

2 do back when we had analog televisions.

3 All of that stuff is on the record, and
4 none of that stuff has really anything to do with
5 printing a single electronic file on two different
6 printers. But let's continue to discuss the two
7 different printers if you wish.

8 Q. Would you agree with me that the -- by
9 the time -- between the time you scanned the
10 document at 9 o'clock July 14th and Mr. Lesnevich
11 scanned the document a day later that the
12 document's appearance changed in some respects?

13 A. Would I agree with you on that?

14 Q. Yes.

15 A. Not even a little bit. Not a
16 scintilla.

17 Q. Have you seen a comparison side by side
18 of Mr. Lesnevich's scan of the "work for hire"
19 document compared to your scan a day earlier?

20 A. Your question was whether or not I
21 would agree that the document had some change
22 between the time I first saw it -- well, not at 9
23 o'clock; it would be closer to 10 after -- I think
24 11 after 9. 9:11 is kind of a charged number here
25 in New York.

1 Tytell

2 But if there was a difference in the
3 document between 9:11 in the morning and when
4 Mr. Lesnevich did -- on the morning of the 14th
5 and when Mr. Lesnevich did his scans, there was no
6 difference in the document. And my observations,
7 direct observations, of the document at that time
8 would say otherwise.

9 I also took a number of photographs of
10 the document on the afternoon of the 15th, some of
11 them after Mr. Lesnevich had departed. And you
12 can see the ink -- the condition of the ink of the
13 document in those digital images on the
14 photograph, and you can see that the ink is faded
15 but not necessarily any more faded than it was in
16 the scans at 9:18 and 9:22 a.m. of the 14th.

17 So I just totally -- I don't know how
18 much more I can disagree with you than totally,
19 but I would if I could.

20 Q. Have you seen Mr. Lesnevich's scans
21 from the morning of the 15th of the "work for
22 hire" document?

23 A. I don't recall seeing those irrelevant
24 scans. I have seen images -- excuse me, I have
25 seen images of them, I guess, that have been

1 Tytell

2 reproduced from time to time, but I don't recall
3 seeing them per se.

4 Q. In those images of Mr. Lesnevich's
5 scans, it's your opinion that those appear
6 visually the same as your scans of the "work for
7 hire" document 24 hours earlier?

8 A. I don't know what I'm supposed to be
9 comparing here.

10 Q. I asked you if you've seen images that
11 Mr. Lesnevich took of the "work for hire" document
12 on July 15th. Did you see those?

13 A. I think so. I think I -- well, I don't
14 know that I've actually seen the native files. I
15 may have done. I don't recall at this time.

16 Q. So would it surprise you to learn that
17 the scan that Mr. Lesnevich took 24 hours after
18 you did appears visually different, the color of
19 the document is different? Would that surprise
20 you?

21 MR. SOUTHWELL: Objection,
22 mischaracterizes.

23 Q. If that were true, would that surprise
24 you that the color of the document between your
25 scan on the 14th and his on the 15th is different

1 Tytell

2 visually?

3 A. I don't know whether -- I think we're
4 going back to before as to the level of difference
5 and the significance of the kind of difference,
6 the qualitative and quantitative difference,
7 between whatever might appear in Mr. Lesnevich's
8 scan and whatever might appear in my scan, whether
9 that would be within the kind of variation that
10 could be expected between any two scans from the
11 same scanner, from different scanners, and then we
12 go through a list of the possible variables.

13 So whether or not I would be surprised
14 would be -- depend upon whether or not there
15 actually was any difference that was detectible
16 and the level of significance of any difference
17 should a difference exist.

18 Q. Would you be surprised if there was a
19 detectible difference between how the document
20 appeared in Mr. Lesnevich's scan 24 hours after
21 you scanned it? Would that surprise you is the
22 question.

23 A. It depends upon the sensitivity of the
24 detecting device as to how large a difference
25 might be detectible. At the electronic level? If

1 Tytell

2 we have two printouts, are you talking about
3 differences at a subatomic quantum level or are
4 you talking about a difference -- are you talking
5 about a difference between black and almost
6 invisible like the difference between the Aginsky
7 scan and the appearance of the actual paper
8 document when I saw it on the morning of July 11?
9 That was a surprising difference.

10 So you would want to have a difference
11 at that level of magnitude at this point in the
12 game. Considering the shock and surprise that I
13 experienced on the morning of July 11th,
14 surprising me now would require a really, really
15 big difference.

16 And I don't think that any difference
17 that might be detectible between a scan taken by
18 Mr. Lesnevich and a scan taken by myself would
19 rise to that level of difference that would cause
20 me to be surprised at this point after having been
21 so surprised on the morning of July 14th.

22 Q. I'm talking about a difference that's
23 visible to your eye, that one document appears a
24 different color than the other document. Would it
25 surprise you to see a scan from Mr. Lesnevich on

1 Tytell

2 the 15th where the document looks like it's a
3 different color than the one you scanned on the
4 14th?

5 MR. SOUTHWELL: Objection.

6 Q. Would it surprise you if that's true?

7 MR. SOUTHWELL: Objection, asked and
8 answered.

9 MR. BOLAND: No, he did not answer.

10 MR. SOUTHWELL: He did, he did. You
11 just don't like his answer, Mr. Boland. But
12 he did answer it.

13 MR. BOLAND: No.

14 A. Okay. I'll try again. If one document
15 were bright kelly green such as you see on
16 St. Patrick's Day in New York and the other
17 document were fire engine red, then that would be
18 a difference that I would find somewhat
19 surprising.

20 However, my degree of surprise would be
21 infinitely less than the surprise which I
22 experienced on the morning of July 14th when I saw
23 the paper document taken out of the envelope by
24 Mr. Argentieri and put on the table, comparing
25 that to what I had expected, having previously

1 Tytell

2 viewed the scans of -- attached to the complaint
3 from mid 2010 and attached to the June 16th
4 declarations of Mr. Osborn and Dr. Aginsky.

5 That level of surprise would be what I
6 would now consider to be surprising and would be
7 exceedingly difficult to reach based upon the
8 kinds of small differences which might exist
9 between two scans in terms of shades of -- slight
10 shades of yellow difference.

11 Q. Would you expect any change in the
12 color of that document to occur during your and
13 the other experts' examination of it from July
14 14th forward? Would that examination cause the
15 document to become discolored, yellow or green or
16 red or whatever?

17 A. I do not believe that the examination
18 procedures conducted on July 14th and 15th did in
19 fact cause any significant, noticeable change in
20 the appearance of that document.

21 Q. I'm not saying whether they did. I'm
22 saying could they. Could the procedures employed
23 by you and the other experts actually cause the
24 document to change color, slightly or
25 dramatically, either way?

1 Tytell

2 A. I don't believe that the procedures
3 employed on those -- on that document that showed
4 up, the actual paper document? Anything is
5 possible, sir. Anything could happen. I do not
6 at this moment believe that any such thing did
7 happen, nor do I believe that the nature of the
8 examination was such that it would have caused any
9 such change.

10 Q. Okay. Would you agree with this
11 statement, that there appears to be some
12 discoloration in this document that occurred
13 between July 14th and July 15th?

14 A. No.

15 Q. And if the court in this case made that
16 statement on the record, you would disagree with
17 the court, would you not?

18 MR. SOUTHWELL: Objection,
19 mischaracterizes.

20 A. I have infinite respect for any and all
21 courts. But if a court chose to make a statement
22 which is contrary to fact, I would have to
23 disagree with that statement. I would prefer to
24 believe that no court would ever make a statement
25 contrary to fact. But anything is possible, as

1 Tytell

2 you have asked me to agree with.

3 Q. And did you alter any of the images
4 that you placed into your report before putting
5 them into your report?

6 MR. SOUTHWELL: Objection, asked and
7 answered.

8 A. I altered them by reducing them in size
9 so they would fit into the area allotted to them,
10 such as the overall pictures of the scans of page
11 1 and page 2 had to be reduced considerably so
12 they would fit side by side on -- within the
13 margins of the page and other images were cut out,
14 cropped, and then reproduced one to one.

15 And other images were cropped, such as
16 the name Paul Ceglia, from page 1 and page 2 of
17 the scans of the paper document. And they were
18 enlarged somewhat.

19 But other than cutting them out and
20 adjusting the overall dimensions, I made no
21 adjustments other than that.

22 Q. No changes to the contrast in the
23 image?

24 A. No.

25 Q. The brightness?

1 Tytell

2 A. I picked the image up; I put the image
3 down. That was what I did with the image. Drag
4 and drop I think is the technical term. Or insert
5 picture is another way to do it in Word.

6 MR. BOLAND: Very well. I have no
7 further questions.

8 EXAMINATION BY

9 MR. SOUTHWELL:

10 Q. Mr. Tytell, you were asked earlier
11 about whether during the course of your
12 examination -- and the question I think had --
13 there were a series of questions, and there was
14 some lack of precision as to dates -- whether in
15 the course of your examination you had touched the
16 "work for hire" document but without gloves.

17 Do you remember those general
18 questions?

19 A. Yes.

20 Q. Are you aware of when, as in which day,
21 that may have occurred?

22 A. Yes.

23 Q. And did that occur that you touched the
24 "work for hire" document without gloves on July
25 14th?

1 Tytell

2 A. No.

3 Q. When did it occur?

4 A. I think on July 15th on -- I think on
5 the afternoon. I'm not sure of the exact time,
6 but sometime on July 15th.

7 MR. SOUTHWELL: Nothing further.

8 MR. BOLAND: I have nothing based on
9 that.

10 MR. SOUTHWELL: Mr. Boland, I'm just
11 going to put our request on the record for the
12 opportunity to review the transcript or errors
13 and confidentiality designations and to
14 confirm that you are going to be sending the
15 payment out -- we sent you an e-mail with a
16 different address to send it to. All right?

17 MR. BOLAND: You just send e-mails from
18 Ms. Aycock or you?

19 MR. SOUTHWELL: That's correct,
20 Ms. Aycock sent it.

21 MR. BOLAND: Okay. I'll send it to the
22 address she gave me, and I'll put it in a
23 FedEx envelope. I will do that at -- the last
24 pickup is at 7. I will do it by 7 o'clock
25 today.

1 Tytell

2 MR. SOUTHWELL: Great. It will be the
3 full amount?

4 MR. BOLAND: Correct.

5 What's the time? Can you ask the court
6 reporter to give us how many time we spent?

7 MR. SOUTHWELL: Do we have four and a
8 half hours?

9 MR. BOLAND: Is someone recording it,
10 instead of guessing, if you could?

11 (Discussion off the record.)

12 MR. SOUTHWELL: Four hours and
13 thirty-six minutes.

14 And Mr. Boland, you will send me the
15 tracking number for the payments, as you said
16 you would?

17 MR. BOLAND: Yes, I will.

18 MR. SOUTHWELL: All right.

19 MR. BOLAND: By e-mail.

20 (Continued on the following page.)
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MR. SOUTHWELL: All right, then. We're
done.

MR. BOLAND: Okay. We're done. Thank
you.

(Time noted: 4:25 p.m.)

PETER V. TYTELL

Subscribed and sworn to before me
this _____ day of _____ 2012.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, LAURIE A. COLLINS, a Registered
Professional Reporter and Notary Public
within and for the State of New York, do
hereby certify:

That PETER V. TYTELL, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 7th day of August, 2012.

LAURIE A. COLLINS, RPR

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WITNESS:	EXAMINATION BY:	PAGE
Peter V. Tytell	Mr. Boland	7
	Mr. Southwell	205

----- TRANSCRIPT MARKINGS -----

DIRECTIONS:

MOTIONS:

REQUESTS:

RULINGS:

TO BE FURNISHED:

----- EXHIBITS -----

TYTELL NO.	DESCRIPTION	PAGE
	Exhibit 1, expert report of Tytell	8
	Exhibit 2, document labeled "Exhibit A"	107
	Exhibit 3, document labeled "Exhibit B"	108

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[& - 3]

Page 1

&	1250 211:3	1:10 1:7 10:19 110:8	99:2,5,10,10,25
& 1:20 2:12 155:10 157:7 158:12,16	13 156:7 159:11	1:32 88:3	100:6 101:5 102:6
0	13th 3:25	2	184:3 202:3
0.003 128:19	14 35:25	2 37:22 38:2 43:17	2011 23:21 28:19
0.010 128:19	1475 2:6	49:15,24 51:8 52:12	35:25 40:4 109:20
00569 1:7	14th 22:16 23:13,22	52:14 54:13 55:21	120:8
1	24:19 25:20 29:8,16	56:19 58:14,16,16	2012 1:16 182:21
1 8:21 9:22 11:22	30:15 31:14 35:7	58:19,25 59:20,21	208:12 209:22
27:4 29:22 49:15	38:6,14 40:9,11	59:25 60:3,8,21	211:5,23
50:22 52:7,10 54:13	41:15,20 48:20 50:6	62:21,21,22 65:16	205 210:6
61:5,7 62:5,20	67:17,17 74:20	67:16 68:20,24	21 51:10 179:3
67:12 73:11 78:5	75:14 76:14,23 89:4	69:21 70:24 71:3,5	212 211:4
103:8,11 107:11,24	89:10 101:11,18,18	71:17,25 72:2,8	21st 137:25
108:8,23,25 109:3	102:3 105:13 106:7	73:11,23 92:24	22 51:11 179:3
110:19 112:9,15,15	109:18 111:14	97:25 98:4,10,15,17	23 179:3
112:18,20,24 113:5	115:5,6 119:18	100:9,11,13,19,22	232-2 108:15
113:6,18 115:3,9	120:2,6 121:9,18	100:24,25 101:4,6	238-2 108:6
126:3 127:14 131:6	130:21 136:2 137:9	101:16 102:6 103:7	24 44:19 179:3
131:17 134:5	137:21,23 138:16	103:11 106:17	198:7,17 199:20
137:20 141:6,10,17	142:16,21,21,25	107:6,13,15,18,19	240 106:25
141:19,20,22	150:19 152:21,22	107:24 108:7,9,11	240-1 106:16,18,19
142:24 151:19	153:24 154:2,8,13	108:24 109:8 110:9	107:4,11,18 108:11
158:5,6 161:16	154:18,20,22 155:4	110:19 112:17	25 151:23 195:22
175:11,14 179:4	155:6 160:19 161:9	113:2,7,16,22	25th 15:24 178:21
180:5,9,25 181:9,13	194:18 195:24	118:12 120:13	182:21
182:11,14,22	196:10 197:4,16	121:7 122:22 123:4	26 182:22
184:10 187:14	198:25 200:21	123:15,16,17 126:6	262-2 74:2
195:21 204:11,16	201:4,22 202:14,18	131:6,17 140:12,14	263-2 32:3
210:18	203:13 205:25	141:3,10,11,13,21	279-9424 211:4
10 9:22 10:2 114:16	15 35:25 140:20	142:11,24 143:6,7	28 50:24 51:2
182:6,23 196:23	15th 28:4,19 29:3,9	144:3,3 145:25	2:55 149:13
10001 211:3	29:18 31:15 134:16	146:7 151:19 180:6	3
10166-0193 2:15	153:18 154:14,14	180:9 181:13	3 1:16 107:11,15,18
107 210:19	154:18,20,23 160:3	182:12,14,16,24	107:18 108:18
108 210:20	197:10,21 198:12	204:11,16 210:19	109:2,14,15 110:9
10:56 1:17	198:25 201:2	20 151:22 156:8	112:7,17 118:12
11 26:8 114:15	202:18 203:13	194:16	120:14 121:7 123:4
182:10 194:11	206:4,6	200 1:21 2:14	123:16,18 127:13
195:8 196:24 200:8	16th 120:7 202:3	2003 50:24 51:2	127:13 140:12,16
11th 200:13	1700 6:22	2009 158:19,20	140:20 141:3,6,20
12 156:7 159:11	17th 120:7	2010 23:4 24:14	142:12,14,19 144:3
184:2	1970s 84:7 157:5	25:17 39:9,21 60:4	145:25 146:9
	1980s 86:17	61:7 69:14 71:5,8	210:20 211:5
	1:00 87:7	72:3 73:17 98:2	

[30 - ah]

Page 2

30 20:14,20 157:10 175:17 330 8:14,24 9:4 67:13 179:3 182:22 3400 4:17 6:11 3:08 149:13	8 8 3:12 114:15 181:24 210:18 8.5 114:15 85 121:3 86 121:3	149:18 accounts 137:12 148:5 accurate 44:20 55:11 128:22 129:6 130:23 142:22 accurately 130:9 194:22 achieve 169:23,24 acknowledge 10:9 64:18 acquire 157:24 acquired 177:4,5,7 178:19,25 acted 157:9 action 209:18 active 163:2 actual 25:12 28:21 35:16 40:10 41:12 73:15 111:6 113:5,6 120:2 133:19 136:25 186:9,11 200:7 203:4 add 10:16 25:10 added 26:20 46:21 47:2 additional 6:22 25:18,21,25 additions 110:15 address 6:14 206:16 206:22 addressed 64:25 addresses 38:9 adjust 180:8 adjusted 177:11,19 177:19 179:8,18 180:4,14,15 181:5 181:18 182:5 183:23 184:7 adjusting 204:20 adjustments 174:5 174:14,14,17,18 175:4,5,9,12,19 179:24 180:3 194:5 195:25 204:21	advantage 129:7 advice 155:11 advocates 31:3,5 afraid 99:3 afternoon 115:6 142:21 195:13 197:10 206:5 age 166:8,14 168:24 168:25 169:7 aged 167:7 agencies 51:24 162:23 agency 51:25 165:21 166:2,6 aginsky 23:7,20 24:8 49:22 53:4 54:11 55:22 58:18 68:4 105:6 106:8 161:3 178:15,16 200:6 202:4 aginsky's 23:23 181:20 ago 16:7 20:15 156:22 157:20 163:18 175:18 agree 10:4 24:8 40:25 102:13 113:17 129:22 135:10,11 160:17 161:4 168:10,13,17 168:20 169:13 171:9,13 189:21 196:8,13,21 203:10 204:2 agreeing 161:8 agreement 18:14 53:21 66:16 69:22 69:24 98:14 101:17 102:17 103:12 150:3 166:13 169:18,24 180:7 agreements 97:23 agrees 99:24 ah 166:25
4	9 9 22:16 24:18,19 41:20 196:10,22,24 90 59:8 64:21 99 64:22 9:11 196:24 197:3 9:15 195:2 9:18 115:7 175:10 194:23,24 197:16 9:22 194:24 197:16 9:30 25:20		
	a a.m. 1:17 2:17 22:16 24:19 175:10 194:23,24,24 195:8 197:16 aaa 160:12 able 43:2 57:2,12 72:14 77:24 78:21 80:24 102:5 122:8 130:6 absence 52:15 absolute 140:9 absolutely 129:25 187:8 absorbing 26:13 academies 173:7 accept 44:13 52:16 52:19 accepted 12:15 20:6 access 62:16 66:14 66:18,19 67:2,7 72:14 accidentally 91:22 account 123:5,8,13 126:22 142:10 143:2,10 148:13		
5			
5 108:24,24 109:3,7 109:12,12 110:9,9 112:15,17 113:2 121:2 123:17 181:15 195:10,12 500 132:4			
6			
6 50:13 54:7,14,16 55:16 56:11 58:15 60:11,18 68:17 70:2 70:9,11,12 181:19 6000 158:18 64 173:2			
7			
7 132:10 181:15,24 206:24,24 210:5 770724 2:7 78 157:5 79 157:5 7th 209:22			

[ahead - asking]

Page 3

ahead 10:7 99:15 149:6 159:5 163:20 aid 45:16 albeit 57:3 114:22 albert 14:21 15:2,5 19:15 103:21 alcohol 51:25 alex 3:3 8:17 9:3 17:22,23 22:3 31:25 149:6 alexander 2:16 algorithms 175:17 allotted 204:9 alongside 133:21 alphabet 30:3 alter 204:3 alteration 45:14 altered 42:9,15 45:8 45:11 46:19 47:9 131:10 204:8 alternatively 158:15 amanda 2:19 18:3 amended 98:16 american 157:16 amount 48:5 207:3 analog 128:15 196:2 analogous 121:19 analyses 13:17 analysis 12:19,21 16:21,25 17:5 20:10 28:6 32:11 33:25 34:5 36:24 42:3 46:14,22 53:18 61:15,21 64:12 65:16 70:7 72:21 74:19 75:12,17,21 75:25 76:3 92:24 100:12 103:17 105:13 123:25 166:16 185:25 188:2,3 analyze 20:3 34:11 34:23 35:8 36:25 76:5 77:2 104:4,8	analyzed 40:11 65:18 67:17 101:17 102:3,16 103:4,10 106:7 analyzing 32:18,24 33:14,17 101:10 ancient 187:11 angle 59:8 answer 13:15 15:23 30:10 31:9,10 36:3 38:23 42:7 65:14 74:11,13,15 76:21 76:22 77:24 80:5 115:13 135:16,17 139:8 152:22 164:14,17 165:7,8 165:13,14 167:2 184:6 185:17 186:24 189:3 191:5 193:2,3 201:9,11,12 answered 184:20 193:6 201:8 204:7 answers 123:19 190:16 anticipated 22:20 23:14,15 antique 172:19 anybody 69:19 anyway 52:4 87:3 apologize 118:5 apparatus 81:4 apparent 46:20 98:9 121:9 136:22 195:22 apparently 50:12 52:10 58:20 60:16 71:11 107:19 108:23 114:12 appear 46:16 50:13 62:8,10 71:17 92:8 92:17 122:2,18 123:3 133:22 134:14 144:5,10,17 144:18,23 145:13 145:20,22,24	146:10,12,14,15 147:10 160:20 186:21 192:5 198:5 199:7,8 appearance 4:7 13:22 25:22 69:2 114:4 126:22 190:12 194:19,21 195:7,19,20 196:12 200:7 202:20 appeared 67:8 134:17,19,21 137:8 142:24 160:21,22 163:3,13 199:20 appearing 123:14 148:13 appears 9:24 37:23 38:2 52:14 70:4 98:13 100:22 109:3 109:7,12 112:9 113:17 118:19 122:21 134:5,8,8 135:7 137:22 138:19 139:20 142:11 145:16 146:20,23 161:3 190:19,21 191:8 198:18 200:23 203:11 appended 39:19,21 apples 114:6 118:9 119:6,7,9 apply 18:20 42:17 appreciate 65:15 170:20 apprenticeship 96:17 approach 46:10 83:25 166:15 169:7 appropriate 75:8 117:14,18 127:11 127:16 136:20 140:18 145:4 167:10,18,19 168:4 169:3 170:25	april 50:24 51:2 archived 45:23 area 34:21 82:11 140:24 161:17 188:22 204:9 areas 136:9 161:24 argentieri 39:15,18 39:25 40:15 41:18 43:22 44:10,12,15 44:21 58:20,22 60:5 98:19 100:5 152:2 184:5 195:17 201:24 arguing 40:23 arguments 30:9 77:17,18 arising 45:25 aroused 49:25 arrange 4:20 arranged 158:11 arrived 28:4 art 66:2 70:16 95:17 158:13 artifacts 136:23 asked 4:2,16 13:7 20:4 32:11 33:12 43:7 46:17 65:9,11 74:2 88:6 102:24 105:19 184:19 198:10 201:7 204:2 204:6 205:10 asking 14:23,25 17:3,4 28:22 33:6 33:11 34:6,18 36:5 45:25 67:21 79:13 79:15,21 81:17 83:4 100:16,17,19 101:8 108:12 115:24,25 116:3,5 119:11 120:23 121:4,6 123:21 125:6 135:15 144:9,17 146:19 151:9 164:22 168:24 184:16
--	---	--	--

[aspects - boland]

Page 4

aspects 49:13 assignment 22:7 associate 28:14 59:11 associated 27:15 association 157:18 assume 15:19 18:19 29:23 89:19 112:16 140:14 141:5,8,11 141:20,22,25 142:7 142:15 assuming 20:20 125:7 143:7 astm 79:5,7,22 81:11 124:6,11,16 124:17,22 125:8,13 166:7,19,24 167:8 167:11,15 168:2,4,9 168:22 169:6,14,17 169:18 171:4,5 186:23,25 atf 51:25 attached 10:18 23:6 30:7,10 39:6 40:15 40:21 77:11 78:2,6 78:10 98:3,15 120:6 178:25 184:4 202:2 202:3 attachment 40:14 58:23 98:22 100:4 attempt 45:16 55:19 attended 157:22 attention 9:20 attorney 116:17 163:22 attorney's 163:4,14 163:16,21 attorneys 2:5,13 11:5 17:11 31:4 34:11 48:17 110:24 111:23 112:2 150:21 152:11 177:22 attributable 191:2,3	august 1:16 209:22 211:5 authentic 66:4 available 3:11 6:3 45:18 46:5 90:23 173:19 194:17 195:23 avenue 1:21 2:14 avoid 91:15 aware 10:24 34:23 57:18 74:18 75:12 81:6 90:8 92:2 103:7,20,23 104:2,8 104:12 125:8,15 129:20 134:20 166:7 205:20 aycock 2:19 18:3 206:18,20	bankrupting 184:24 bar 89:22 bare 74:21,24 barely 140:2 barrel 128:4 barring 44:5 based 23:8,18,23,25 42:5 45:15 78:2 91:10 100:12 116:21 135:24 184:7 202:7 206:8 baseline 59:8 basic 119:14 174:16 175:20 195:25 basically 36:10 59:18 basis 180:23 181:4 bathtub 139:24,25 battery 160:12 beach 28:7 bears 50:25 beautiful 120:22 began 105:13 beginning 30:2 85:13 144:8 149:15 195:2 behalf 16:4 17:8 163:3 belief 180:23 181:4 believe 8:14 11:25 17:15 18:21 19:14 36:13,15 37:17,18 38:8 39:11 50:8 53:21 57:24 79:3 80:3 97:18 101:12 101:19 102:23,25 106:10 108:2,5 116:2 120:7,20 143:25 145:25 153:3 160:4 172:20 172:22 174:3 178:16,19,20 179:6 180:19 183:11 195:4 202:17 203:2 203:6,7,24	bell 178:17,18 benjamin 2:18 17:24,25 better 19:3 60:18 70:23 98:8 105:15 beyond 30:3 big 140:6 158:17 200:15 bill 149:19,20,21,22 billing 4:6 bit 24:19 43:18 44:19 64:19 88:20 99:3 126:19 140:23 159:3,5 173:2 183:11,13 196:15 black 23:16,18,24 24:2,4 43:16,17,19 121:12,13 138:6,6 138:13 147:20 174:24 200:5 blanco 49:12 51:6,8 51:11 52:2,4 58:2 61:25 62:22 63:20 64:2,4,13 68:5 72:25 157:14,21 178:10 blanco's 61:19 63:23 blank 9:24 93:20,22 94:23 blood 209:18 blue 167:13,14,15 boland 2:4,9 3:8,22 4:22 5:5 6:17 7:8,17 7:18 8:17,23 9:2,5 9:16 20:23 21:3,7 22:3 28:22 31:25 32:8 33:10 53:17 54:25 73:25 74:5 88:9,15 106:19,22 107:4 111:11 115:24 140:17,22 143:18 149:6,12 158:24 159:2 164:21,24 165:2,6
--	--	---	---

[boland - ceglia]

Page 5

165:12 178:4 180:20,22 184:21 186:5 201:9,11,13 205:6 206:8,10,17 206:21 207:4,9,14 207:17,19 208:4 210:5 bombing 158:8 book 167:12,13,14 167:15 bookshelf 124:25 borders 187:6 bore 53:8 bother 52:21 62:15 bottom 127:13 183:8 195:3 box 96:14 brain 148:25 break 12:17 21:13 97:22 118:6 140:23 146:4 147:5 148:18 149:7 152:4 breaking 18:24 20:23 breakout 152:9 brief 151:25 155:5 bright 201:15 brighter 143:13 brightly 26:16,19 27:3 brightness 174:15 174:23 175:9 179:23 204:25 brilliant 77:17 bring 7:6 26:7 158:12,15 173:18 175:6 brings 46:24 broader 100:17 broadway 211:3 brought 41:19 133:20 135:25 163:14,15 brown 119:16 121:20 183:16,17	183:19 brownish 109:9 buffalo 24:18 28:2,6 38:7 40:4 41:16,16 49:16 50:6 53:3 106:7 116:14 132:19 158:11 build 157:22 building 121:2,2,3 121:10 157:15 buildings 122:4 built 156:14,16 157:2,11 bulb 156:6 bulbs 156:4,5,5,8,8 156:10 159:6,9,11 159:11,15,15,17,23 160:3,10,16 bunch 118:12 burden 54:23 business 74:7 150:13,14,16 162:8 162:11,13,18 163:9 busy 152:3 button 194:6 c c 2:2 29:24 39:14 172:21 179:2 183:9 209:2,2 calibrated 129:4 calibration 128:24 caliper 127:5 128:2 call 6:25 17:6 22:5 28:23,25 33:24 38:11 49:16 60:4 66:7 95:23 99:13 142:3 150:23 167:13 173:8 called 7:13 30:5 33:25 43:17 50:14 90:9 92:11,13 94:17 96:17 99:18 100:20 118:9 152:9 156:20 172:19,21 173:3	174:4 186:8 calling 50:15 52:6 111:2 116:2 183:6 calls 109:21 151:7 camera 156:18,19 156:23 157:2 160:10 177:6 cameras 172:16 canada 105:3 cancel 3:13 canceled 4:11,19 cancellation 4:18 5:20,21 6:21 150:11 canon 133:7 capacity 154:10,12 154:13,18,19,22 156:12 capital 81:2,3,3,3 173:4 183:9,11 capture 134:16,18 172:14 captured 49:21,23 54:6,11,12 119:22 120:5 173:12 182:8 194:23 car 86:20 133:8,10 133:11,12 153:10 153:11 carbon 41:9 care 80:7 138:20 careful 55:6,10 57:10,10 97:9 carefully 69:4 97:6 carry 74:8 cartridge 147:20,24 cartridges 147:21 case 10:18 14:2,8,20 15:10 16:5,15,25 17:5 18:11,15 19:18 20:9,12,14,20 22:8 24:13 29:7,14 32:4 32:10,22 33:19 45:2 48:13 53:12 57:19 66:11 67:9 74:9 78:7 79:2 81:15,22	81:25 82:13 86:14 86:16 89:4 91:21 95:12 97:5,18 98:16 102:18 104:5,9 110:8 112:3 124:2 125:18 149:16 160:18 163:5 164:2 173:12 175:6 177:24 184:13,15 184:16 203:15 211:5 cases 16:22 20:12 33:19 47:13 162:24 163:4,7,13,15 164:7 184:13 casework 13:23 cast 27:17 161:12,23 162:5 185:5 192:6 catalog 93:12 catch 9:19 category 47:7 cause 140:5 193:16 200:19 202:14,19 202:23 caused 59:12 61:9 82:5 162:4 195:14 203:8 causes 91:13 192:9 causing 21:10,13 91:20 caution 80:7 83:16 cautioning 83:17 cautious 89:6 91:14 ceglia 1:5 7:19 39:13 39:18,25 50:4,6,7 50:10 51:4,7,9,15 52:5,11,17,19,22 53:8 54:15,16,18 55:17,21,25 58:13 58:14,17,19,21,23 58:24 59:21,23 60:5 60:14 63:2 68:10,12 69:18 70:3,11,22 71:7,19,20 72:12 73:16,20,21,23
---	---	--	---

[ceglia - compared]

Page 6

92:16 97:25 98:9,19 100:5,21 101:4,6 103:5 109:10 180:12 182:11,11 182:16,24 183:4,5 184:5 204:16 211:5 ceglia's 50:11 51:12 51:13 52:9 53:19 55:15 56:10 60:13 60:23 65:19 66:15 67:8,16 97:19 98:13 100:21 ceglias 66:12 ceiling 124:25 cell 21:5 150:24,24 center 158:8 centuries 127:25 century 46:24 48:12 48:13 67:4 certain 48:4 82:9 90:25 91:11 129:25 169:23 188:2 189:24 certainly 13:5 19:24 46:11 115:21 118:24 130:23 154:24 162:14,19 162:25 163:3 certify 209:10,16 cetera 10:19,19 35:17 36:17 46:25 66:6 99:25,25 105:6 107:16 110:8,9 137:14 chain 105:17 160:14 chance 168:12 change 22:9,13,15 155:22 173:20 176:4 189:18,22,24 190:4 196:21 202:11,19,24 203:9 211:7 changed 24:20 80:12 170:14 196:12	changes 11:8,9 148:2 173:15,23,24 204:22 channels 179:21,22 character 71:22,22 characteristics 36:14 60:24 182:2 characterizing 190:16 charge 6:4,24 105:15 charged 196:24 charging 149:15,24 check 5:2,8 6:12,12 14:6 96:21 159:14 160:7 checkered 143:4 chemical 76:3,6,24 76:24 89:24 90:9 91:10 chemicals 76:4 85:24 chicago 178:21 chinos 138:8,9 choose 83:12 chose 203:21 chrysler 133:9,10 cia 163:25 164:5,7,8 164:9,12,18 165:3 165:20 166:2,2,4 circuit 156:19 circular 128:8 191:4 circulated 169:3 171:20 circumstance 189:16 claim 42:18 117:23 clarification 165:18 clarify 111:8 146:19 179:8 class 47:7 clay 92:12 clean 84:2 88:22 cleaner 86:19,23	clear 3:10 29:10 55:16 57:5 59:17 76:22 88:5 111:10 123:19 126:12,13 126:20 130:10 136:7 156:5 clearer 111:11 clearly 21:23 115:12 136:11 client 5:23 12:25 17:8 clock 128:8 195:3 close 187:3 closed 156:19 closely 102:13 closer 196:23 cloth 80:12,13,19 81:9,12 clue 169:2 clues 47:2 collect 51:8,20 52:8 52:10 collected 51:12,15 52:7 collective 71:23 collins 1:22 3:4 209:7,25 color 39:12,24 43:19 44:19,19 62:10,11 62:16 109:9 135:19 136:6 137:2 161:11 175:3 183:17,18 185:5 192:20,21,22 192:23 198:18,24 200:24 201:3 202:12,24 colorado 157:19 colored 27:17 colors 190:3 combination 123:13 combine 147:25 come 16:12,24 34:10 47:12 61:15 81:13 86:9 88:21 118:20 150:15 164:23	168:9 188:9 comes 21:14 170:11 184:3 190:5 comfort 140:19 149:11 comfortable 42:19 117:20 122:10 coming 149:2 comma 183:5 188:20,23 command 105:18 comment 88:21 142:13 comments 11:17 33:2,4 61:20 commission 211:25 commit 171:17,18 committee 167:19 168:4 171:12 common 85:23 102:8 160:25 communicate 63:16 communicated 63:10 communication 151:8 company 15:25 172:20 211:2 comparable 115:7,9 121:22 compare 12:25 30:18 52:9,11,13 58:23 73:14,20 99:17 100:21 114:3 114:18,24 115:14 115:25 116:5 117:10 118:18 119:5,6,7 120:13 121:4,6 135:5 145:7 145:10 176:8 compared 29:8 33:21 53:7 54:4 56:8 60:2 61:3 71:21 117:25 119:19,21,24 120:4
---	---	---	---

[compared - copy]

Page 7

120:6 123:16 151:4 192:7 196:19 comparing 13:17,18 30:14 58:8,13,16 59:14 114:6 116:24 117:22 118:9,10 134:9 140:12 187:4 189:10 198:9 201:24 comparison 11:25 25:12 31:13,13 48:19 61:13 69:20 71:2,8,13,24 99:23 114:10 117:15 118:22 119:11,13 120:10,20,23 121:17,18,19 135:10,14 137:10 189:12,15 196:17 comparisons 13:8 73:18 121:22 compatible 61:9 complaint 40:16,17 40:21 43:9,11 60:5 98:3,16,16,23 100:4 202:2 complete 7:25 49:25 97:19 completely 117:6 171:21 177:16 completion 102:23 complex 174:10 compliance 188:10 compliment 54:18 component 91:3 components 76:12 76:25 compound 174:10 computer 44:2 96:25 115:4 116:14 116:16,17 117:24 133:21 153:5,8,8,11 154:4 188:11 190:9 192:17,18 193:15 193:16	concept 187:2 concerned 83:22 147:4 concerning 61:21 concerns 91:13 conclude 138:25 139:2,4 concluded 120:2 conclusion 33:23 65:15 67:19 72:6 92:23 97:4 102:11 117:21 118:21 conclusions 15:6 concomitant 161:22 185:9 condition 26:6 106:13 126:23 127:3 134:21 135:23 142:23,23 151:12,16 197:12 conditions 18:17,20 134:15 150:4,7 187:24 conduct 151:20 conducted 202:18 confer 5:23 6:7 conference 22:4 152:8 confidentiality 206:13 confirm 33:12 206:14 confirmation 4:25 5:7,15 6:19 conform 68:21 conformity 69:8,9 69:10,13 confused 30:25 38:22 connected 21:8 153:5,8,9,11 connection 53:16 163:5 consensus 170:2,3	consider 39:25 40:4 64:24 134:24 136:4 145:19 152:4 185:3 185:4 202:6 considerably 84:15 204:11 considerations 118:13 considered 44:2 69:15 93:23,24 128:15 considering 200:12 consistent 13:3 52:23 72:4 185:14 constituents 76:7,10 76:13 constitutes 73:13 constructed 68:13 consult 6:23 consumers 90:23 contact 105:9,10 150:20,23 contacted 16:3,8,9 contacts 163:9,11 contain 91:3 113:18 contained 90:9 141:22 contaminants 83:23 86:4 106:3 contaminate 82:20 83:8 contaminated 83:2 185:12 contaminating 89:7 contemporaneous 53:9 content 11:22 33:11 contents 15:10,15 15:20 17:3 context 34:6 continue 196:6 continued 88:14 150:22 151:6 207:20	contract 16:20 17:5 23:2 39:3 40:9 41:17 48:20 65:17 65:17 67:16 72:9 99:14,18,19 100:12 100:20 101:10 103:3,5 107:15,25 108:25 112:19,21 112:25 113:5,7,19 115:3 129:13,18 130:19 141:7 contrary 93:4 138:3 185:3 203:22,25 contrast 26:16 27:19 56:13,14,15 73:15,20 161:15 174:15,24 175:9 177:13 179:23 204:22 control 155:17 controls 155:14 convenience 183:19 conversation 17:2 17:11,12 63:13,15 152:2,5,18 conversations 14:14 14:18,22,25 15:5,9 17:16 18:11 33:13 35:18 36:11,19 151:11 convincing 59:18 cool 86:15 copied 44:4 69:4 93:25 98:22 copiers 62:11 copies 4:15 22:24 23:2,5,8 31:19 43:3 66:22 99:5 110:22 110:25 111:22 176:20,22 177:19 186:18 188:8 copper 87:2 copy 26:18 39:19,21 39:22 41:9 57:24 58:14,17,25 59:20
--	---	--	---

[copy - defendants]

Page 8

59:21,25 60:21 61:6 67:6 94:7 95:19 98:3,8,17 99:6 106:25 173:21 176:10 182:20 184:8,9 copying 94:9 corner 27:5,5,6,8,8 27:10,11 109:6 161:16 correct 6:16 15:21 20:22 31:9 32:15 38:14,15 39:16 40:11 41:24,25 63:22 82:14,15 107:22 118:15 120:3 123:22,23 131:2 142:5 144:16 152:15 170:21,25 206:19 207:4 correctly 139:2,3 190:16 cost 6:25 costs 4:7 coterminous 27:21 136:9 161:24 cotton 80:11 counsel 5:24 10:4 17:2 32:17 35:24 44:11 164:3 177:10 179:12 count 13:4 counter 78:12,13 county 209:5 couple 64:16 166:3 174:11 186:15 course 6:7 12:3 25:21 27:7,25 52:17 95:24 177:17 184:23 186:24 205:11,15 court 1:2 8:12,19,24 10:6 12:20 13:20,21 84:2 88:21 116:14 116:16,16 150:8	176:8 203:15,17,21 203:24 207:5 courthouse 11:6 courts 12:15 20:6 203:21 cover 29:23 coverage 184:12 covering 125:3 184:18 crack 45:20 cream 27:17 161:11 crease 27:9 161:17 create 98:21,22 101:25 169:13 created 27:9 45:9 93:2 101:14 109:17 111:19 115:16 116:18 creating 96:9 creation 45:19 crime 158:2,2 criticism 62:7 critique 62:6 cropped 180:11 181:16 182:3,13,16 204:14,15 crutcher 1:20 2:12 curiosity 49:25 63:4 curious 54:3 current 132:9 158:13 currently 104:22 184:10 cut 69:11 126:12,13 126:20 130:10 181:17,21 204:13 cuts 21:4 cutting 204:19 cv 1:7 10:19 cyan 147:19 190:4,7 190:9,13 cymk 179:21	d d 1:5 29:24 81:3 210:2 d.c. 158:21 d70 172:16,17 d90 172:17 damage 81:13,20 82:5,19 185:18,24 186:8,11 damaged 82:16 184:24 185:19,22 195:5 dark 26:12,19 27:2 27:11,15 47:25 121:13,19 183:20 183:20 195:20 darkened 175:14 darker 109:6 122:21 123:3,6,7,14 138:7 138:11 145:20,22 145:24 146:10,12 146:14,16,20,23,24 147:10 148:14 183:13 data 46:6 131:7 date 10:20 47:22 51:2 52:13 53:9 56:4,7,10 59:22,24 60:2 62:24 63:22 65:4 71:9,12,14,20 77:13,21 93:3 106:11 211:5 dated 23:22 50:24 56:23 64:15 68:17 dates 23:16 45:19 50:13 52:13 71:18 107:21 109:11 205:14 day 5:5 30:16 47:16 49:6 53:10 56:7,10 56:14,23 68:11,17 88:7 110:21 134:13 135:6 141:24 150:6 150:9,10,17 152:20	152:21 153:18 160:19 195:9 196:11,19 201:16 205:20 208:12 209:22 211:23 days 4:3 35:13 38:7 38:7 64:16 65:2 86:17 89:5,11 134:7 137:7 141:24 150:12,13,13,15,16 153:14 186:12 deal 124:11 125:9 146:13 dealing 20:9 171:13 dean 2:9 7:18 decide 24:21,25 168:16 decided 61:16 decimal 126:17 130:4,5 declaration 23:20 23:22 61:19,20 63:23 67:24 77:10 declarations 23:6 63:25 64:3,6,14,20 78:25 120:8 202:4 decline 164:17 deed 47:23 default 131:19 defend 170:25 defendant 48:18 72:18 179:20 defendants 1:10 2:13 9:11 11:14 13:25 14:3,5,11 16:4,10 17:2,11 18:15,16 19:8 30:24 32:17,23 34:11,22 35:12,24 36:6,22 37:4,9 44:11 48:17 63:8 75:17,22 77:12 102:16 103:10,14 104:4,8,21 110:23 111:23,25 126:9 135:5 149:16
--	--	---	---

150:21 175:22 176:12 177:10,18 177:22 179:10,19 180:18 defense 10:4 define 82:19 137:15 160:24 178:5 definite 80:5 93:7 definitely 127:4 definition 94:20 degree 145:17 201:20 degrees 59:8 deleterious 80:15,22 delineated 161:17 delivered 159:8 deny 192:15 departed 197:11 department 66:2 164:3 depend 133:24,25 186:7 199:14 depending 189:19 depends 128:24 188:3 199:23 depicts 141:16 deponent 211:6 deposed 6:4 deposition 1:19 3:13 3:24 5:12,13 6:3,8 6:15,25 209:12,14 211:5 depositions 150:9 depth 43:18 describe 22:13 33:18 34:2 66:3,9 108:20 139:12 179:18 described 45:22 95:9,14 139:17 describing 47:4 53:18,21 124:7 description 23:23 144:2 210:16	design 157:4,6 designations 206:13 detail 61:8 64:21 114:25 117:2 detailed 65:14 details 20:21 122:13 173:18 175:6 detectible 199:15,19 199:25 200:17 detecting 199:24 detection 81:4 deteriorated 135:23 determination 93:7 97:8 118:2 166:8,15 169:7 determine 37:22 43:2 45:13 52:5 81:6 93:6 determined 66:4 develop 84:10,17,21 85:14 developed 60:14 84:19 173:5 175:17 development 84:9 85:8 develops 84:4 deviations 71:6 device 21:6 128:21 199:24 devices 22:5 97:16 128:23 130:12 diagonal 71:12 diagonals 56:5,6 dial 128:7,14,14 dictates 75:5 difference 57:13 61:10 115:18 119:9 121:5,8,9,12 122:8 126:25 127:2 130:10,11 136:6,8 136:16,18,18 138:8 139:7 140:8 147:3 148:4 190:11 192:24 195:15 197:2,6 199:4,5,6	199:15,16,17,19,24 200:4,5,6,9,10,15,16 200:19,22 201:18 202:10 differences 11:21 59:5,10,11,12,13 60:7,8 61:8 97:24 118:13,17 121:11 122:6 136:21,23,23 136:25 137:2 148:7 148:12 150:19 183:15 188:16 190:20,25 191:2,7 192:10 193:16 200:3 202:8 different 18:10 20:18 24:22 45:12 64:5 67:20 73:18 84:18 93:10,14 94:15 97:15 106:13 114:23 115:2,20 116:4 122:7 125:3 127:5,6,24 128:14 130:8 133:23 134:3 134:10,10 136:7,17 144:5,19,25 147:23 148:3 151:12 153:16 155:25 156:2 160:8 177:15 177:16 188:18,24 189:11 190:3,8,18 190:20,23 191:14 191:16,17,18,21 192:3,4,5,12,18,19 192:19,24,25 193:8 193:10,17 194:10 194:13 196:5,7 198:18,19,25 199:11 200:24 201:3 206:16 differently 194:4 differs 100:24,25 101:5 difficult 202:7	difficulties 4:12 difficulty 55:13 digital 41:23 42:3,5 42:8,9,14 43:3 44:24 45:7,11,14 99:20 172:8,15 177:6,6 197:13 digs 170:16 dimensions 204:20 dimmer 156:3,4 direct 74:15 197:7 direction 6:14 59:6 59:10 93:4 143:12 directions 210:9 dirty 89:14 disagree 197:18 203:16,23 discoloration 185:7 203:12 discolored 135:7,12 160:21,23,24 202:15 disconnected 53:22 discouraged 187:4 discovering 85:4 discovery 43:22 84:8 discuss 4:16 15:14 15:17,19 32:16 35:11,19,21,23 36:3 36:6,21 37:2,3,8 41:21 154:6 196:6 discussed 12:4 16:2 32:23 36:10,12 49:14 57:25 93:11 125:12 discusses 124:18 187:2 discussing 32:20 66:13 79:19 92:20 190:11 discussion 48:11 62:4,9,15 169:10 207:11
---	---	---	--

discussions 62:21 65:7 dismiss 9:11 77:11 176:3 180:18 display 128:18 dispute 40:22 45:25 distance 9:18 120:24 distinct 94:16 district 1:2,3 163:12 163:15,17,17,18,23 163:23 disturbing 80:22 document 8:14,24 9:4,8,21 10:23 11:3 11:7,10,20 12:7 13:2 16:18 18:22 19:22,25 22:17,18 22:19,24,25 23:9,14 23:15 24:2,7,9,17 25:12,12,15,23,24 26:6,9 28:11,13,18 29:3,16,17 30:13,15 30:16 31:2,8,14,18 32:2,3,19,25 33:15 33:24 34:12 35:6,9 35:14 36:24 38:3,4 38:5,10,11,17,20,21 38:24 39:5,17,23 40:2,3,5,8,15,21,24 41:13,14 43:6,7,13 45:4,8,10 49:16,17 49:19,20,22,25 50:7 50:8,14,15,17,23,25 51:3,15 52:14,17 53:3,20 54:5,8,10 54:11,13,14,17 55:16,22 56:2,12,17 56:20,23,24 57:6 59:2 60:11,18,22 67:12 68:10,18,20 68:25 70:18,25 71:4 71:8,9,18,25 72:3,8 73:16,24 74:2,20,21 75:6,14 76:15,23	77:15,15,20,22,25 78:6,18 79:17,20,23 80:17,22 81:14,21 82:4,6,13,17,21 83:2,8,13,20,24 84:3 85:17,25 86:3 86:4,12,13 89:3,7 89:11,19 90:6 91:15 91:20,24 92:9,18,21 92:25,25 98:2,5,7 98:10,11,15,20,21 99:2,5,13 100:23 101:2 102:2,10 103:7,19 104:4,9,17 105:20,21,25 106:3 106:6,8,9,12,16,20 107:6,9,10,12 108:6 108:11,12,18,21 109:4,9,16,25 110:20 111:12,15 112:10 113:10 115:15,20 117:11 117:22,23 118:2 119:16,25 120:2,5 124:14 125:13,18 130:25 131:2,18 132:18 133:4,18 134:5 135:3,7,12,22 137:7,20 138:2 140:14,16 141:11 141:14,17,21,23 142:23 146:7 148:15 150:18 151:4,11,15,16,23 152:3 154:11,21 155:3,19 157:17,18 160:19,21,22 161:2 161:20 162:12 167:24 170:10 171:3,19,21 176:14 178:8 179:3 180:10 180:11 182:20,22 182:25 183:10 184:18,23 185:4,6 185:20,22,25 186:8	186:10,13,18 188:6 188:21 190:17,19 190:24 191:7,17 193:9,23,24 194:16 194:19 195:4 196:10,11,19,21 197:3,6,7,10,13,22 198:7,11,19,24 199:19 200:8,23,24 201:2,14,17,23 202:12,15,20,24 203:3,4,12 204:17 205:16,24 210:19 210:20 document's 196:12 documentation 25:22 26:3 documented 27:25 195:6,9,12,15 documents 11:6 23:19 31:5 38:25 39:2 40:13 45:23 51:3 53:10 67:9,11 69:25 73:17 75:10 79:8 80:7 81:7 84:2 86:9 88:22 89:9 91:14 92:6,8,14 101:11 110:5,16 118:19 127:15 138:15 145:7 158:15,16 167:22 186:17,20 188:5 191:10,16,18,21 192:11 195:17,23 doe 69:18 72:12 doing 7:23 11:24 13:17 36:14 47:23 55:10 61:14 71:24 72:20 85:19 93:12 122:10 162:13 166:16 dolls 78:15 dots 62:10 71:11 double 87:3	dozens 125:3 dr 3:11,18,21 4:5 7:5 23:7,20,23 24:8 49:22 53:4 54:11 55:22 58:18 68:4 104:11,13 105:11 152:10 178:16 181:20 202:4 draft 167:9,17,21 168:14,15,18,19 169:2,16,20 170:10 171:3,7,19,20 drafted 169:22 drafting 79:5 166:19,24 169:22 drafts 167:24 drag 205:3 dramatic 136:11 dramatically 202:25 drawn 55:6 69:2,3 93:24 drives 177:3 driving 28:15 153:10 drop 205:4 dropped 181:14,22 182:9 183:24 duddy 96:17 due 4:12 192:24 duly 7:13 209:13 dunn 1:20 2:12 17:17 18:12,21 31:19 43:11 44:16 108:15 152:11 dunn's 7:21 106:15 duplicate 44:9 dye 76:8 dyes 76:8
e			
e 2:2,2 3:12,15 4:23 5:6,8 6:18 7:12,12 7:12 29:24 39:13,14 39:15,15,18 40:14 58:22 60:6 81:2			

[e - excuse]

Page 11

88:2,2,10,10,10 131:25 184:5 206:15,17 207:19 209:2,2 210:2 e.g. 80:8 earlier 20:4 25:11 42:25 44:7 70:8 91:12 92:15 140:13 144:16 150:20 181:21 196:19 198:7 205:10 early 63:19 86:17 157:25 158:6 195:16 ease 40:6 easier 10:3 18:9 31:9 96:11 136:10 easily 190:23 eastern 163:15,22 easy 53:25 96:10 edge 125:20 129:9 editing 171:23 172:9 173:13 edition 132:9 133:15 effect 80:22 91:17 effects 80:16 efforts 85:7 eight 150:6 eighties 157:25 either 6:4 14:9 22:7 57:25 58:10 68:4 77:18 90:8 98:4 99:19 103:11,18 114:19 130:18 141:16 154:20,21 154:23 158:12 173:5 202:25 elbow 178:24 electronic 11:14,21 28:21,24 39:4,11 41:4 43:14,25 61:7 62:13,17 72:3 73:17 73:17 110:23 111:4 111:19,22 117:11 117:24 119:24	126:15 127:20 128:18 131:5 133:20 143:4 176:13,24 184:4 192:2 196:5 199:25 electronics 44:6 46:25 171:19 electrostatic 81:3 elements 71:16,21 71:24 73:10 94:11 eliminate 193:20 elliott 1:8 embark 61:16 embedded 131:12 empire 121:10 employed 72:25 165:21 202:22 203:3 employee 152:17,24 155:10 employees 165:23 endorsement 96:21 engage 117:5 engaging 127:3 engine 201:17 england 84:7,15,16 engraved 128:4 enhancement 173:17 enlarged 182:17 183:23 204:18 enlargements 114:13 entire 22:19 170:5 171:4 193:22 entirely 116:4 188:24 envelope 41:20 111:13 195:18 201:23 206:23 epson 131:25 132:2 132:9 equalize 136:20 equally 127:9	equipment 158:23 178:20 erich 178:18 errata 211:2 errors 206:12 esda 75:24 81:2,2,10 84:4,8,21 85:13,13 85:16,22 91:18 especially 184:13,14 esq 2:9,16,17,18,19 essentially 59:19 73:13 85:20 156:18 established 168:23 et 10:19,19 35:17 36:17 46:25 66:6 99:25,25 105:6 107:16 110:8,9 137:14 euphemistically 84:13 evaluate 147:11 evaluated 48:20 127:15 event 3:19 events 37:15 eventually 22:10 171:4 176:14 everybody 62:19 105:8 168:16 170:12 evidence 59:19 evident 67:23,25 evil 47:23 evolved 127:24 exact 51:2 53:8 65:4 68:17 206:5 exactly 11:11 38:9 45:22 57:22 73:5 88:25 144:23,23 154:5 examination 7:16 34:4,9 35:13 36:7 36:15 37:16,19,21 37:24 38:9 42:5,25 47:7 48:5 49:8,11	61:12 74:24 79:9 80:18 81:14 82:12 83:12 84:4 88:14 105:16 124:15 125:13 132:18 135:25 137:7 150:22 151:6,21 152:15 153:14 194:17 195:24 202:13,14,17 203:8 205:8,12,15 210:4 examinations 81:11 83:21 85:16 160:15 examine 22:17 34:24 36:25 38:10 38:16 42:14 46:18 76:9 examined 7:14 26:9 27:25 33:20 37:18 38:6,14 39:23 40:3 40:8 41:15 75:10 88:12 127:15 188:14 examiner 12:7,14 19:22,25 57:6 79:10 135:22 examiner's 77:15,20 examiners 31:2 51:15 85:17 157:17 157:18 examining 57:9 75:6 79:16,23 89:5,9 90:5 151:10 example 46:17 68:11 80:9 85:25 148:21 190:21 examples 67:3 exceedingly 202:7 exceeds 58:5 exceptions 161:14 excess 83:16 exclusive 47:6 excuse 18:24 49:5 51:13 58:15 88:24 143:18,18 154:14
---	---	---	--

[excuse - file]

Page 12

178:3,4 181:15 185:17 197:24 executed 60:15,16 191:22 exemplars 51:20,21 exercise 73:8 114:24 115:10 116:4 117:4 117:6 exhausted 147:21 147:22 148:2 exhibit 8:21 9:9 11:22 29:15,19,23 29:24 30:14,17,22 39:5,19 51:10 77:17 78:18 98:7 106:14 106:24 107:6,7,13 108:4,14,18,19,22 108:24 112:2,16,21 113:7 123:3,4,7 127:14 140:11,14 140:16 141:6,10,11 141:20,21 142:11 142:12,14,19 143:6 143:7 144:3 147:10 176:3 179:2,4 180:25 181:2,9,12 187:14 210:18,19 210:19,20,20 exhibits 10:18 29:8 29:25 30:2,6 51:10 73:2 108:8 114:4 118:11 120:17 121:25 122:3,5,19 140:12,13 141:3,16 144:4,20 145:11,12 210:15 exist 166:3 199:17 202:8 expect 109:22 202:11 expected 23:25 58:8 151:13 199:10 201:25 experience 34:9 46:3 81:20 82:5,7	82:11 86:8 93:9 143:13 experienced 200:13 201:22 experimentation 80:20 expert 6:2 8:21 10:5 14:8 16:5 20:6 42:3 45:2 82:25 102:16 103:10 137:19 145:6 178:2 210:18 expert's 134:7 135:13 138:17,18 expertise 42:5,18,20 experts 13:25 14:5 14:11,15,16 15:10 35:12,12,22 36:7,22 37:4,9 74:19 75:13 75:17,18,19,22 76:25 103:14 104:3 104:16,22 105:14 105:21 119:23 120:8 129:16 133:19 134:10 135:6 137:6 160:18 161:2,7 166:14 168:20 178:5 202:13,23 expires 211:25 explain 38:22 147:9 170:24 explanation 46:5 56:21,25 explanations 147:2 147:4 explicit 3:14 explicitly 3:17 express 41:19 extent 44:17 45:17 101:3 102:12 165:11 external 177:3 extra 34:20,21 extreme 55:13	extremely 61:2 85:5 eye 22:17 138:18 140:7 145:18 190:19 200:23 eyes 131:2 f f 9:9 29:23 39:12 78:18 88:2 172:21 209:2 face 27:2 128:8,13 128:14 facebook 1:9 141:7 facebook's 186:2 fact 37:23 50:2 53:11 83:8 84:6 133:6 138:3 142:10 152:24 154:25 155:2 169:4 185:3 186:11 192:24 202:19 203:22,25 facts 27:23 135:24 factual 147:3 fade 130:16 143:12 162:4 faded 41:18 107:16 107:19 109:2,11 112:13 119:16,19 119:20 120:3,18 121:14 122:2,18,25 130:19 134:23 137:18,22 138:6,19 138:22 139:10,13 142:11 143:9,15,22 145:9,13,16,17 160:20 161:10 190:22 191:8,12 192:7 194:20 197:14,15 fadedness 114:3 145:8,9 fading 139:12,16,19 139:23 161:21 182:18 185:4,7	fair 110:11 130:21 130:22 142:22 149:4 164:10 171:10 fairly 5:25 105:4 143:17,21 161:13 194:22 fairness 118:23 fall 55:7 158:20 familiar 54:24 72:24 91:9 158:23 fancy 128:12 far 42:19 75:16 102:5 114:3 121:5 123:11 147:4 191:10 feature 135:24 136:15 174:3 features 98:9 102:4 102:14 134:2 148:19 fedex 5:14 6:13,20 206:23 fee 4:7,16,17,18 5:11 5:12,20,22 6:4,5,5,5 6:11,21 150:10,11 150:17 feel 42:13 44:25 82:16 120:9 122:10 128:21 129:6 feeling 152:12,13 feels 169:22 feet 140:3 felt 42:19 63:6 126:24 127:10 felting 188:18 fibers 188:18,21 field 20:6 42:18,23 162:17 166:14 167:23 168:10 169:13 171:9 187:5 figure 8:2 25:13 file 8:25 43:8,14,15 43:16 44:4,5,12,14 44:15,18 45:18,21
---	--	--	---

[file - front]

Page 13

58:20 62:13 98:19 98:21 100:4 111:19 111:23 116:13,15 116:18,18,20,21,22 116:23 131:5,7,8 133:20 176:24 177:15 181:22 184:4 192:2,17,21 196:5 filed 10:10 23:3,3 24:10 25:16 29:7,14 30:13,19,21 31:20 32:3 39:7,9 43:9,10 63:25 64:2 67:9 77:10,11 78:7,25 112:3 176:8 180:16 180:17,18 181:3,6 182:21 files 39:8,12,12 43:21,24,25 44:8,9 44:10 45:23 46:2,2 46:4 48:15 60:6 62:17 99:25 110:23 111:2,3,4 116:3,11 143:4 173:25 176:13 177:8,9,21 194:24 198:14 filing 24:11 78:11 filings 67:11 filters 156:25 final 93:7 183:3 finally 65:3 182:6 183:25 186:14 financially 184:25 find 3:14 48:3 58:4 130:10 188:15 201:18 findings 63:8,10 126:8 129:12 fine 31:23 33:10 49:19 56:22 79:14 140:24 193:7 194:13 finer 129:4	finger 185:12,15 fingerprint 83:24 91:15,20,25 92:11 fingerprints 83:19 84:3,5,11,17,23,25 85:10,14,15,21,21 86:18 91:18 92:3,7 92:13 fingers 83:23 86:20 fingertips 92:9 finish 121:7 140:22 finished 15:20 164:2 fire 201:17 firearms 51:25 firm 90:5 firm's 116:17 159:8 first 5:21 13:21 16:3 17:12,14 24:13 26:9 38:19,20,21,24 39:20,22,23 43:5 46:24 48:11 57:8 63:16,21 65:8 67:4 75:15 76:23 81:25 93:14 107:11,12 109:17 110:2 111:12,14 114:9,11 130:17,18,20,25 137:6 139:22 140:15 147:13,15 151:22 155:13 156:19 158:3,8 159:7,22,25 167:9 167:20,21 168:14 171:16 183:12 194:16 195:22 196:22 fit 159:17 182:4 204:9,12 fits 193:25 five 29:25 108:23 149:8 173:10 fix 170:14 flag 57:6 flashlight 160:13	fleming 85:4 flight 14:24 floor 124:25 flowing 139:25 fluorescence 86:24 161:25 162:2 fluorescent 26:16 27:12 56:15 181:25 fluorescing 26:20 27:3 focus 135:21,24 136:15 146:3 focused 89:10 focuses 36:14 foggy 49:5 fold 161:18 folded 27:8 folders 177:15,16 folks 106:15 168:10 168:12 follow 125:16 168:7 following 6:15 183:5 207:20 follows 7:15 88:13 foolish 192:15 forensic 12:7 19:21 85:18 125:13 135:22 157:18 162:8,13 187:5 form 11:14 12:9 28:20 30:9 39:4 41:5 76:19 95:5,11 104:17 156:17 167:5,11 formal 16:11 format 28:24 45:9 111:3 116:11,23 117:24 167:8 175:22 176:25 177:9 182:4 formation 36:17 formations 35:16 56:9 73:15 formed 23:8	former 137:4 formerly 164:4 forms 51:24 52:3 55:12 95:7 forth 45:19 94:8 135:25 170:9 209:12 forward 170:22 202:14 forwarded 44:15 foster 84:7 152:17 152:24 154:7 155:10 157:7 158:12,16 found 59:14 60:6 61:8 63:5 86:19 90:18,22,24 foundational 146:25 four 17:21 18:5 71:16,21,23 134:7 147:23 173:9 180:21 207:7,12 frame 36:20 frank 15:17 103:24 frankly 3:14 free 55:6 94:2 101:20 freely 58:8 66:10 67:18,22 68:8,19,22 freeman 84:8 152:17,24 154:7 155:10 157:7 158:12 freeman's 158:16 freeware 173:8 frequency 87:3 front 9:9 10:15 26:12,19,23 27:5,11 27:16,18 31:16 56:16 108:8 109:8 112:8,18 114:4 118:11,14 120:14 120:17 121:25 139:15 151:15 156:25 161:13
---	---	---	--

[front - happening]

Page 14

174:20,24 187:16 193:4 full 6:4 170:19 207:3 funded 84:17 furnished 210:13 further 27:25 88:13 93:5 205:7 206:7 209:16	giveaway 55:6 given 22:8 45:2 64:25 76:23 88:6 105:2,10 127:3 128:25 146:20 157:8 168:4 176:16 186:9 187:24 209:15 gives 46:25 71:14 128:19 167:15 giving 47:22 80:5 155:11 glance 188:12 glitch 44:6 gloves 75:3,7,8,11 76:16 79:9,10,16,23 80:3,9,12,12,13,14 80:15,17,19 81:9,12 81:15,21,24 82:3,10 82:14,17,22 83:3,9 83:13,18,21 105:20 105:22 205:16,24 gm 133:10,11 go 3:5,6 5:13 32:4 42:19 53:14 64:23 78:15 88:20 97:20 99:15 115:12 140:13 144:7 146:4 148:18 149:6 159:3 159:5 163:20 167:4 174:5,8 183:17 185:10 188:7,19 189:9 192:21 193:20 194:13 199:12 goes 168:19 170:12 183:3 187:6 going 3:5,23 5:18 7:5,6 10:16 13:20 20:25 25:3,9 30:3 35:8 40:7 42:20 48:12 51:22 52:21 55:13,18 62:15 65:23 75:13,16,25 76:5,9 77:2,13 94:5	94:7 116:21 144:22 147:5,24 186:3 187:19 194:4 199:4 206:11,14 good 3:8 5:5 8:10 9:5,5 21:22 31:9 36:22 37:11 55:17 56:21,22 66:6 80:14 83:14,15 88:18,19 94:13 100:9 149:12 gotten 4:24 25:19 118:3 143:11 164:8 168:25 government 51:24 162:23 163:4,6,9 gradations 138:12 grandma 78:15 gratuitous 80:8 gray 43:19 great 41:22 56:14 172:23 207:2 greek 187:12 green 201:15 202:15 grew 61:18 gross 60:24 136:8 group 167:20 guess 3:9 11:4 18:22 23:4,21 24:11,18 27:17 30:5 39:5,7 41:12 49:15 54:17 60:4 61:12 67:4 86:17 92:5 100:2 110:25 134:22 151:22 152:8 157:25 158:6,19 161:12 171:6 172:6 173:24 190:10 195:10 197:25 guessing 207:10 guns 86:22	half 4:3 6:5,5 88:6,7 124:24 150:10,17 158:25 186:2 207:8 hallmark 69:2,3 hand 8:13,19 21:5 55:7 86:7,10,19,23 94:2 101:20 108:14 182:23 209:22 handed 187:14 192:3 handle 80:7 86:12 88:22 89:19 168:4 handled 89:11 handling 76:15 79:8 79:19 80:17 81:14 82:4,18,22 83:3,9 83:13 86:8 89:3 91:14 105:19,21,25 184:23 hands 74:21,24 75:3 82:4 84:2 86:2 88:22 89:6,8,12,13 89:17 106:3 handwriting 12:14 12:19,21 13:8,18,19 20:3,10,19 23:15 32:11,18,24 33:3,14 33:20,21,24,25 34:3 34:5,9,12,17,24 35:9,14,15 36:8,15 36:25 37:12,16,19 42:21 48:18,19 49:3 49:9 51:9 61:11,12 62:3,22 64:5 102:11 102:17 103:2,11,18 handwritten 50:9 112:14 113:13 happen 75:16 86:13 96:18 147:5 148:23 169:2 203:5,7 happened 24:16 44:6,11 62:20 191:9 195:14 happening 32:5
g	g 30:2 39:14,15 172:21 game 200:12 gargling 21:17 garnered 35:4 gee 170:11 general 169:7,8 205:17 generalized 80:6 generally 13:12 18:19 34:3 74:14 83:25 95:4,5 130:16 160:9 186:20 geography 47:17 gerald 14:17 15:14 19:9 79:2 103:15 132:17 getting 8:16,19 25:11 34:15 46:3 49:6 65:25 84:23,24 85:10 99:3 119:14 191:16 gibson 1:20 2:12 7:21 17:17 18:12,21 31:19 43:11 44:15 106:15 108:15 152:11 gif 44:25 give 5:7 14:5 22:3 31:9,17 65:4 77:13 77:21 111:22 140:9 147:8,12,13,23 148:4,12 177:18 207:6	g	
	h	h 2:16 habit 119:4	

happens 47:21 91:20 150:12 170:15 happenstance 57:15 happy 83:5 117:5,7 121:24 harassing 186:5 hard 143:19 177:3 harmful 81:10 harris 28:7 haul 163:2 hailed 159:23 160:2 he'll 5:16,16,17 head 147:14,15 148:11 headed 16:19 22:25 50:23 107:18 header 113:3 heading 12:3 78:20 110:8 headset 21:7 health 173:6 hear 7:25 8:3,4,7 19:3 20:25 21:20,20 21:23 29:10 88:16 heard 37:3,5 82:8 90:15 165:6 hearing 5:21 8:8 heels 170:17 held 1:19 help 48:8 96:13 145:4 helpful 34:13 36:23 hereinbefore 209:12 hereunto 209:21 hey 34:16 86:15 hi 14:23 high 70:10 highly 46:13 162:17 hire 16:19,19 22:25 28:11,18 29:2,15 30:15 31:14 32:18 32:25 33:15 38:4,5 38:11,17 39:2,22 40:2,5 41:17 51:3	52:14 53:2,19 54:9 54:11,13 55:22 56:11,16,20 58:25 60:18,22 65:17 68:20,25 69:22 70:25 71:17,25 72:2 72:8 73:24 92:18,25 98:2,5,14 99:19 100:23 101:9,17 102:17 103:2,12 104:21 107:15,24 108:25 109:4,8,16 110:20 111:15 112:19,20 113:19 115:3 119:15,25 125:18 129:13,18 130:19 131:18 132:18 133:4,18 141:7,14,17,21,23 154:21 180:6,6,9 182:25 194:16 196:18 197:22 198:7,11 205:16,24 hired 12:25 32:10 45:2 104:4,8 162:24 history 13:13 143:4 174:4 hob 55:19 hold 51:19 108:17 holding 47:21 96:19 home 84:16 hood 159:14 160:6,7 hope 8:11 24:11 39:15 54:24 149:21 152:3 162:22 hoped 18:25 35:3 hopefully 159:4 167:10 host 104:15 hotel 89:18,25 hour 149:17,25 hourly 149:23 150:3 150:5 hours 26:8 88:5,7 140:20 150:7	158:25 180:21 195:16 198:7,17 199:20 207:8,12 household 85:23 86:6 huge 117:16 humid 49:6 hums 188:9 hundreds 13:5 129:2 hungarian 18:9 hypothetical 44:24 46:8 48:11 133:17 134:4,21 137:5 138:3,14,21,24 139:7,14 141:5 146:12,15,18,25 148:10 169:5 192:8 hypothetically 46:9 133:24 137:19 138:16 142:8,15 146:6,20 147:3 148:10 i idea 36:23 37:11 60:24 83:4,14,15 98:25 110:14 171:17,18 identical 59:2 187:9 191:10 192:2 identification 8:22 107:7 108:19 identify 9:6 78:5 97:17 107:8 109:23 ii 165:25 166:4 illuminated 86:24 illumination 26:10 26:12 136:3,13 illustrate 180:11 illustrations 62:7 image 28:24 42:8,9 42:14 45:7,11,14 73:2,9,10 96:25 98:17 99:20 107:14	107:19 108:25 109:7 112:18 113:8 119:21 121:5 122:21,25 123:2,15 123:17 133:21 134:18 139:13,15 148:14 172:9 173:4 173:13,20 176:7 182:7,8,24 183:9,25 184:3 189:18,22,24 204:23 205:2,2,3 imaged 53:3 55:22 58:18 imagej 173:4 images 23:25 24:9 25:11,16 28:11 39:17,23 41:23,23 42:3,6,24 43:2,3,5 44:24 45:3,6,6 46:15,16,19 49:20 49:21 53:5 54:4,6 54:10,12 59:25 60:4 61:7 67:5,7 68:2,3 69:14 71:5 72:23 73:12,14,18 98:2 100:6 101:5 102:7 106:24 114:12,20 119:22,25 120:4,6 121:13 122:7,9 134:16 136:18 173:11,16,18,21,23 174:8,8 175:7 176:7 176:9,13,17,18,21 176:23 177:4,5,7,12 177:14,17,19,20,24 178:7,11,19,25 179:7,7,9,18,20,23 180:2,4,4,5,7,10,13 180:16 181:5,11,13 181:16,19 182:2,13 183:22 184:7 189:10 191:17 194:15 197:13,24 197:25 198:4,10 204:3,13,15
---	---	---	--

[imagination - jim]

Page 16

imagination 149:5 imagine 140:9 imaging 178:8 imagining 140:8 imitate 94:5 immediately 6:12,15 24:3 130:20 188:22 important 115:15 impressed 64:20 impression 23:9 81:7 impressions 80:25 imprint 91:25 imprinted 84:9 improvements 157:9 inaccuracy 128:22 inappropriate 117:19 146:17 inaudible 41:10 124:21 inch 126:16,18 129:2,2,3 include 17:22,23 37:21 76:7 131:11 176:17 included 18:2,4 29:7 29:14 30:13 36:19 139:12 171:4 176:7 176:14,18 including 103:14 161:10 incomplete 10:14 incorporated 169:17 incorrect 108:2 169:15 increments 130:3 indentations 185:10 185:13 indented 81:7 84:24 independence 67:24 indicated 5:12 15:3 34:8	indicative 72:5 indicia 92:22 101:22 indistinguishable 188:2,13 individual 167:9 individually 1:8 71:21 individuals 18:12 industries 125:4 infinite 93:17 117:17 203:20 infinitely 201:21 information 35:4 46:6 105:10 informed 39:13 43:8 43:21 44:9 58:21 150:12 infrared 134:15 157:15 ingredients 89:23 89:24 90:3,12 initial 16:16 17:6 24:10 51:17,23 131:17 150:5 initialed 50:9 initially 150:18 initials 23:16 52:9 52:10 54:6 61:4,6 123:22 initiated 152:2 ink 23:24 24:2,4,16 25:14,23 26:3,6 35:15 41:18 66:17 76:2,5,7,25 95:25 105:3 107:16,20 109:2,10,11 118:19 119:15,20 120:3,16 121:13 130:16,18 134:14,17,19,21,23 135:4,23 137:8,22 138:7,18,22 139:9 139:13 142:24 143:8,11,11 145:8 147:18,19,20,21,24 148:13 151:19	160:20 161:10,21 162:4 166:8,14 168:24,25 169:7 182:18 183:2,3,4,16 185:7 190:3,22 191:7 192:6,21,23 194:20 197:12,12 197:14 inks 76:11,13 90:25 91:2,11 inquire 7:3 inquired 25:11 inquires 18:18 inquiry 93:6 insert 205:4 inside 159:24 instance 56:5 58:18 68:5,16 80:8,9 82:23 87:6 175:8 193:23 194:6 instances 134:23 institutes 173:6 instrument 130:2 instruments 130:3 insurance 74:8 184:17 intend 72:17 intensity 155:18,21 155:24 interest 170:20 interested 49:13 51:5 52:25 61:23 93:5 170:6 209:19 interesting 48:10 52:16 62:6 63:5 85:6 interestingly 41:7 interfere 81:10 85:15 interfering 84:25 interject 21:2 interlineation 52:6 52:20 61:5,6 107:16 109:2 112:9,14 113:9,14,21,23	144:14 interrupt 20:24 21:19 74:3 99:16 140:18 143:19 interrupted 169:10 interruption 22:2 invalid 117:6 inventory 104:25 invisible 138:13 200:6 invitation 31:24 involve 95:8 involved 14:8 20:15 36:13 57:19 63:2 79:4 94:12 104:19 120:11 153:11 166:23 171:12 192:25 involves 48:6 ireland 84:14 irrelevant 197:23 island 120:25 israeli 158:2 issue 10:12 24:15 38:9 46:7 52:16 80:10 119:14 135:21 issues 3:16 7:25 22:20,21 24:6 27:13 27:24 36:3,12 64:24 103:2 item 108:5 ivory 27:17
j			
j 173:4 jagged 21:25 january 119:22 120:5 jersey 47:15,23 163:17 jerusalem 158:3 jet 192:21,23 jim 178:10			

[john - latex]

Page 17

john 23:7 69:18 72:12 178:13 joins 7:11 joint 157:15,19 juice 119:10 july 22:16 23:13,22 24:19 25:20 28:4,19 29:3,8,9,16,17 30:15 31:14,15 35:6 35:25,25 38:6,14 40:4,9,11 41:15,20 48:20 50:6 53:6 67:17,17,24 74:20 75:14,14 76:14,23 89:4,10 101:10,18 101:18 102:3 105:13 106:7 109:17 111:14 115:5,6 119:18 120:2,5 121:9,18 130:20 134:16 136:2 137:9,21,23 137:25 138:16 142:16,20,21,24 150:19 152:21,22 153:24 154:2,8 160:19 161:9 178:21 194:18 196:10 198:12 200:8,13,21 201:22 202:13,18 203:13 203:13 205:24 206:4,6 june 63:19,22,25 64:3,6,11,15 65:6 120:7,7 202:3	key 160:13 kind 13:19 14:22 16:21 18:25 21:25 31:20 35:4 36:15 38:18 43:18 46:7,14 46:22 47:3,3,24 48:5,19 52:16 55:3 55:18 56:18 59:11 61:21 65:25 68:9,9 68:21 70:20 71:6 73:8 78:3,11 80:16 81:5,13,20,23 82:8 86:5,7,16,19 87:3,6 89:15,21 94:12 100:2 107:14,18 108:24 112:18 119:2 120:20 121:8 121:17 124:16,17 128:17 144:21 146:18 156:21 159:19 160:13 168:7 172:24 173:12 174:14,18 175:12 186:11 191:4 192:14 196:24 199:5,9 kinds 36:13 47:13 59:13 82:9 94:15 121:22 160:15 175:8 179:22 195:25 202:8 knew 75:24 91:8 knob 128:3 knobs 174:19,24 know 3:10,16 4:9 5:22 7:4 8:2,7 9:19 10:19 11:5 17:19 18:23 19:6,7,10,11 19:13,17,19,23,24 19:25 20:2,5 21:11 21:15 28:13 29:5 30:4,25 32:12,13,15 34:22 41:3,5,9 44:19,20 45:21 46:16 47:14,16	50:21 51:8,23 52:2 55:3 62:11 64:15,25 67:10 68:15 70:14 72:10 74:4,13,23 75:15,20,21 76:9,12 76:13,24 78:4,5,11 78:14 79:7,13,15,21 79:24 81:16,18 82:25 83:7,9,10 84:22 85:23 86:3 89:23 90:3,12,13,18 90:21,21 91:2,4 94:12 95:13 97:2 98:24 99:12 102:15 102:20,21 103:4,6,9 103:19,22,25 104:3 104:6,6,18,18,18 105:2,11 106:2 108:3 111:10,25 112:4,5,6 114:19 115:15 116:6,7,12 124:6 125:6,11,12 128:19 129:15 130:13,15,22 131:14 132:2,5,11 132:13,16,21,24 133:4,5,6,8,9,10,13 133:14 139:23 140:21 143:24 148:23 152:13 154:25 155:2,7 157:13 159:6,9,12 159:19,19,23,25 161:7,8 162:11 164:14 165:17 166:10,11,13,16,17 168:3 173:9 174:20 175:15,25 176:4,5,6 177:12,25 179:5,15 182:19 184:14 186:22 189:5 191:9 194:8,12 197:17 198:8,14 199:3 knowing 44:13	knowledge 45:15 81:19 knowledgeable 42:23 known 13:2,19 20:19 85:12 knowns 66:11,11,12 66:15 kravitz 96:17
l			
			l 7:12,12 39:14 88:10,10 lab 86:16 158:2,2 labeled 107:6 108:18 210:19,20 labs 162:12 lack 50:2 105:14 161:25 205:14 lacks 58:7 169:5 lag 156:21 laid 167:11 lakewood 2:8 landscape 46:16,20 47:11 lap 57:4 laporte 4:23 14:17 14:19 15:14 19:9 77:5,7 79:2 103:15 104:11,13,25 105:6 132:17 laporte's 77:4 129:11,20 large 199:24 larger 182:12 larry 178:6 laser 26:18 86:18 87:2,3 192:20,22 lasers 87:4 late 157:5 latent 80:24 81:6 85:8 latex 81:15,21,24 82:3,9,13,17,22,23 83:3,9,13,18,21

[laurie - lyter]

Page 18

laurie 1:22 3:4 209:7,25	146:23 183:4,10,12	73:18,20 98:8 171:7 180:12 211:7	160:6 168:16 174:5 174:8 175:10
lavatory 89:14 90:4	letters 120:16	lines 71:12 78:20 167:2	182:21,22,23 183:8 186:21,25 188:12
law 90:5 116:17 159:8	level 58:7 69:9,13 70:10 114:24	linked 53:10 192:18	188:21 190:14 191:10 192:12,23
lawyers 17:17 30:8 31:21 32:23 34:22 167:14 177:18	126:21 127:2 129:4 129:6 139:6,12,16 139:18,23,24,24 140:4,5,6,6,8,10 169:24 187:9 188:2 188:3,15 189:25 190:8,10,10 199:4 199:16,25 200:3,11 200:19 202:5	list 14:5 105:2,22 118:7 123:9 147:6 199:12	193:10,23 194:4,9 194:13
layers 78:15	levels 174:15 190:2 190:11,12	listed 104:23	looked 20:18 25:14 25:14 30:15 49:19 52:25 53:4 59:23 63:5 66:5 102:25 106:11 130:20 133:7 139:17
laying 94:23	liability 74:8 184:12 184:17	listing 105:8	looking 9:12 11:2,7 17:20 29:21 34:7,20 40:17 44:17 49:24 55:15,20 58:9 61:25 68:15 69:5 94:8 96:8 107:10 110:2 112:7 114:11 116:9 117:24 122:9,17,19 134:13 136:22 139:5 144:24 151:25 152:3 165:22 181:8 184:8
layperson 12:23 94:19	library 124:25	literature 81:19 93:11	looks 10:14 57:6 94:4 123:6,6 133:8 138:22 143:9 191:11 192:6 201:2
learn 198:16	life 117:3 181:17 182:12	little 15:12 19:3 24:18 26:24 65:24 78:20 81:25 103:13 114:16,17 125:4 126:19 128:12,18 138:10 140:23,24 143:9 149:9 159:2,5 169:4 187:15 191:12,24 192:7 196:15	lost 24:24 53:16 73:6 101:15 118:3
leave 54:22 152:7	light 27:15 96:11,14 96:14,14,23 119:16 138:8 154:11 155:18,24 156:2,3,5 156:6,10 159:9 160:3,16 183:6 195:11	live 117:16	lot 20:21 167:22 174:17
leaving 83:19	likelihood 147:11	llc 2:4	lotion 86:2,5,7,11
led 84:7 143:5	lights 155:20,21,22 155:25	llp 1:20 2:12	lots 73:12 157:8
left 27:6 59:6 86:20 92:11 145:2 149:10 152:6	limit 125:14	loaded 144:22	loudly 8:7
legal 2:4 59:18 77:16,18 78:3 164:3	limitation 72:16	location 158:14,21	low 160:11
legible 102:10	limitations 42:17 127:14	logjam 168:2	ls 104:14
length 120:24 144:7	limited 47:18	long 13:23 16:9 54:21 56:5 57:9 123:9 129:7 140:25 143:3 163:2 189:9	luminesce 185:8
lens 156:25 157:2	limiting 92:5,14	look 12:23 16:17 23:9,10,13 31:7 37:11 45:3,5,12,17 46:11 47:15 48:3,7 49:14 52:21,24 55:5 56:18 80:4 86:15 94:24 106:14 108:4 112:8,24 113:21 118:24 119:3 120:15 122:13,25 138:15,21 141:3,10 143:16 145:7 151:18 159:14	luminescence 134:15
lesnevich 14:13 19:12,19 20:9 28:3 28:9,14 29:2 37:20 61:22 62:2,7 102:25 103:9 104:11,14,25 105:24 133:3 196:10 197:4,5,11 198:11,17 200:18 200:25	line 10:18,20 11:4 35:16,20 36:16 38:18 54:18,19,25 55:3,8,14,17,18,20 55:23 56:3,8,18,22 57:14 60:19 66:6 68:7,25 69:3 70:10 70:23,24 71:22,22		lyter 14:21 15:2,6 19:15 103:21 104:11,13,25 105:6
lesnevich's 28:17 29:9,17 30:16 31:15 38:8 196:18 197:20 198:4 199:7,20			
letter 18:21 35:16 35:19 71:21,22 114:18,18 120:14 122:5,23,23,24,25 123:20,21 140:12 142:10 143:8 144:3 144:4,9,10,12,13,19 145:11,13,15			

[m - mine]

Page 19

m	malfunctioning	mean 5:25 12:22	165:17 186:14,23
m 114:18 120:14,16	153:23	20:24 25:7 28:21	190:3
122:2,5,18,23,23,24	man 69:18	30:8 32:13 33:16	mentioning 62:25
122:25 123:6,6,14	manhattan 120:24	34:4 38:23 50:19	190:7
123:14,17,20,21	manipulated 47:9	61:24 66:24 74:3	meshed 188:22
140:12 142:10	manipulation 47:4	77:14 85:18 95:3,20	mess 80:21
143:9 144:3,4,9,10	47:24	97:7 99:16 100:2	messrs 49:12 63:20
144:12,13,19	manipulations 48:4	105:7 126:13	84:7
145:11,13,15,20,23	manual 169:18	127:12,21 137:16	metadata 45:20
145:24 146:10,22	manufacturer 129:5	138:6,7 148:14,22	46:4 131:4,9,10,11
147:10 172:21	131:23	150:23 160:12	method 97:10 168:7
183:10	march 15:24 182:21	162:20 164:23	168:11 169:13
machine 28:16 41:6	182:21	165:19 176:22	methodologically
67:6 81:2,5 84:4,21	margins 204:13	189:3,5	94:17
85:14 152:14,19,25	mark 1:8 37:23,23	meaning 137:12	methodology 95:15
153:6,9,12,14,16,16	59:24 60:3,10 62:23	192:6	methods 97:7
153:17,19,24,25	62:24 69:20,22 70:4	meaningful 119:13	168:11
154:2,8,10,22 155:4	70:9,19 71:2,4,10	means 92:16 114:13	micrografx 172:21
155:6,8,11,19,24	72:7 92:17 102:5	191:19	micrometer 124:4,7
156:11,17 157:7,24	106:17 113:2	meant 78:23	124:12,19 125:10
158:22 159:7,18,21	marked 8:22 9:22	measure 127:22	125:17 128:3
160:2 173:2 188:8	29:22 107:7,10,13	measured 47:15	129:12,17 130:13
machines 26:18	107:15 108:19,22	measurement 127:2	micrometers 127:22
57:24 155:15,16	108:23 123:18	127:23 130:7	microscopic 151:20
156:14,16 157:9,12	184:10 187:18	measurements	microsoft 193:5
158:17	194:24	125:17,21,24 126:2	194:6
magenta 147:19	markings 128:9	126:5 129:8,12,17	mid 23:4,21 24:14
magnification 119:3	210:8	129:20,22 130:14	25:17 39:9,21 60:4
122:9,14 188:24	marks 16:20 128:4	measures 126:14,15	61:7 69:14 71:5,8
magnify 122:17	185:8,10	measuring 124:8,12	72:3 73:17 98:2,25
magnitude 121:11	marriage 209:18	125:10,20 126:20	99:4,10,25 100:6
200:11	match 100:13,13	126:24 130:2,8,12	101:5 102:6 184:3
mail 3:12 4:23 5:6,7	material 11:18	mechanic's 86:23	202:3
5:8,9,14 6:18 40:14	86:13 106:11	mechanics 86:20	middle 9:23 151:18
41:19 58:22 60:6	matter 7:19 23:4	medium 121:19,20	167:7
184:5 206:15	32:21 34:17 43:7	121:20 138:9	midnight 4:11
207:19	44:3 86:7 97:12	meeting 157:16,19	midst 53:18 84:12
mailed 39:13,18	154:15 164:12	memorized 125:8	midtown 120:25
mails 3:15 206:17	174:11 209:20	memory 94:5 125:6	miles 121:2
majority 171:8,11	matthew 2:18 17:24	mention 32:16 50:2	mimic 93:21
171:14,15	17:25	150:21	mind 57:8 88:8
making 6:9 28:11	matting 188:18	mentioned 35:21	138:21
35:17 61:24 131:13	mcmenamin 3:11,18	70:8 91:12 95:15	mind's 140:7
131:17 166:15	3:21 4:5 7:5 104:13	104:10 105:5	mine 184:2
	104:14 105:11	128:23 161:16,23	

[minimum - numbered]

Page 20

minimum 6:11 150:9 minute 8:15,18 30:24 187:9 188:15 191:15 minutes 140:20 149:9,10 151:22,23 174:12 194:16 195:23 207:13 miscellaneous 77:19 mischaracterizes 76:19 161:6 198:22 203:19 mode 179:21,22 model 57:16,17 58:10,12 59:15,16 94:8 95:16,17,23 96:5,7,12,20 97:17 98:4,6,11 99:5,7,8,9 99:10 101:12,24 102:7,8 115:15 131:23 132:2,16 133:5,15 137:13 models 158:3 modified 170:11 modify 170:25 mom 163:2 mom's 162:12 moment 49:5 72:19 88:17,24 119:17 179:25 203:6 monday 5:18 monitor 156:20,25 montage 47:10 month 13:21 56:7,9 112:13 113:13,22 114:2 monthly 149:19,21 months 172:7 moon 69:18 163:7 moot 171:22 morning 23:13 24:18,19 25:20,25 26:9 28:8 41:20 89:18 111:16 115:5	119:17 131:2,6,18 131:21,24 132:7 133:22 136:2 137:9 142:16,20 147:6 153:2 155:6 187:15 194:17 195:5,24 197:3,4,21 200:8,13 200:21 201:22 mother 162:25 motion 9:11 77:11 78:12,13,14 176:3 180:17,18 motions 210:10 motor 153:10 mountain 47:17 mountains 46:17 47:17,19 move 128:10 moved 43:25 46:20 moves 69:7 170:22 movie 96:16,18 moving 21:12 24:13 25:16 39:6,8,20,21 41:8 44:4 multiple 125:21,24 mz 123:22	native 28:24 111:3 116:2,11,23 173:25 177:9 198:14 natural 67:18 68:22 101:20 naturally 58:8 66:10 67:22 68:8 nature 109:6 130:11 161:10 186:9 189:23 203:7 navel 164:5 nd 87:3 nearly 60:13 necessarily 14:19 66:25 117:12 180:14 197:15 need 4:16 6:19 8:6 149:8,10 167:22 168:17 169:24 needed 25:2 needle 128:9 needles 128:11 needs 165:7,14 negative 80:16 neglected 149:14 neither 51:6 never 3:14 165:23 167:25 168:22,25 173:19 187:13 new 1:3,21,21,23 2:15,15 22:19 24:5 47:5,15,23 49:6 70:13 93:22 120:22 133:11 153:25 163:17,18,23 167:3 167:6 168:8 196:25 201:16 209:3,5,9 211:3,3 newer 158:5 172:15 newspaper 47:21 70:13 nice 54:19,20 62:15 68:18 106:15 175:15,18	night 3:12 4:11 56:13 nikon 172:13,15 177:6,6 nineteenth 48:12 nineties 158:7 nonfluorescing 26:13 nonplus 55:4 nonsignature 33:21 nontext 26:15 normal 26:16 58:6 138:6 161:25 northern 84:14 163:18 notary 1:23 7:14 88:12 208:15 209:8 211:25 notation 50:9 noted 87:7 88:3 208:6 notes 72:20,22 73:13 notice 51:7 105:21 150:16 182:25 noticeable 202:19 noticeably 70:23 noticed 4:10 35:7 130:17 150:19 151:3,12,14,17 nowadays 48:6 96:24 156:20 number 5:7,15 6:19 8:14 22:4 31:18 32:3 48:3 49:9 60:6 60:8 61:20 64:25 67:13,21 77:22 93:10 97:15 105:5 115:8 132:11 134:2 142:2 155:25 156:2 157:3,11,20 163:13 167:16,23 194:9 196:24 197:9 207:15 numbered 127:13
--	---	---	---

[numbers - page]

Page 21

numbers 67:12 128:9,10,19 numeral 61:13 numerals 52:12 71:13 numerous 20:7 163:3 188:15	occupy 124:24 occur 92:3,4 202:12 205:23 206:3 occurred 22:14,15 97:5 203:12 205:21 occurring 74:20 occurs 21:15 offense 60:12 office 84:16 153:15 158:16 163:4,14,16 163:21 176:10,21 176:25 177:2 offices 1:20 7:21 28:6 159:8 164:4 oh 15:4 30:23 74:12 115:21 141:14 170:12 172:12 176:23 179:14 191:13 ohio 2:8 oil 92:9 oils 91:21,23 okay 5:5 7:7 8:9 9:16 11:2 13:4,15 14:4 21:22 25:4,7 25:10 29:12 34:14 36:5 37:7,14 38:13 50:19,24 52:18 53:23 62:14 64:8 66:9 74:16 77:9 88:16,19 95:16,19 100:7,9,24 103:16 106:21 108:22 113:3 123:24 137:25 138:4 141:9 141:18,25 142:6,18 146:5 148:17 149:4 149:12 152:22 159:2 161:12 165:10,23 166:23 174:23 179:14 184:21 192:7 193:14 194:13 201:14 203:10 206:21 208:4	old 20:20 167:7 168:8 172:17 174:20,25 175:13 oldest 128:5 omniscient 42:22 once 7:20 99:2 155:22 168:19 one's 40:23 ones 12:3 15:3 104:7 156:19 159:18 179:15 onion 78:16 open 187:16 opened 24:15 operate 155:7 operating 28:16 155:6 operation 115:19 opinion 26:5 44:25 67:14 72:9 95:12 97:9 102:9 106:6,10 115:13 122:15 127:17,18,19 137:10 160:22 161:19 198:5 opinions 161:8 opportunity 22:24 206:12 opposed 27:19 opposite 20:8 55:24 option 143:12 optional 79:10 orange 183:20,21 oranges 119:7 order 114:15 121:11 127:23 orders 10:7 original 23:3,11,12 32:20 39:8 40:24 41:14 43:2,3 44:5,9 44:18 45:7,7 62:13 62:17 65:18,20,22 66:17 68:16 84:6,10 101:20 157:7 173:20,24 177:16	originally 32:9 82:21 175:17 187:17 originals 177:8 orin 17:15 osborn 23:6,7 24:8 49:22 53:4 54:4 55:23 68:4 100:25 101:6 178:13 202:4 osborn's 100:14,22 ought 168:21 170:6 outcome 209:19 outlined 102:14 output 62:10 115:19 190:5,24 192:4,10 193:9,17 overall 26:22 27:17 112:21 122:21 135:3,19 204:10,20 overlays 172:24 174:13,13 overly 123:12 overnight 5:7,14 6:13 overtaken 37:15 overwhelming 59:19 oxymoron 187:22
o			
o 32:14 88:2,2,2 131:25 172:21 o'clock 195:13 196:10,23 206:24 object 33:9 165:12 185:14 187:10 objected 74:12 objection 12:9,12 28:20 74:10 76:18 76:19 90:11 100:15 109:19,21 151:7 161:5 164:13,19 165:6 167:5 170:8,9 170:22 184:19 186:4 198:21 201:5 201:7 203:18 204:6 objections 171:2 objects 41:21 119:5 observation 27:23 observations 161:9 197:6,7 observatory 164:5 observe 28:10 obtained 177:25 obtaining 130:14 obvious 24:3 192:15 obviously 4:9 8:8 11:3,8 13:22 18:6 20:24 35:7 63:18 72:13 125:7 192:9 192:14 occasions 20:7 110:19 154:3 166:18 occupied 164:4			
p			
p 2:2,2 7:12 88:10 131:25 183:12 p.m. 3:12 87:7 88:3 115:9 195:10 208:6 pace 57:4 page 9:9,22,23 10:2 11:19 16:18 22:25 26:12,15,24,25 27:2 27:3,4,7,10,11,20 29:23 32:2 37:22 38:2 39:3 49:15,15 49:24 50:3,8,9,13 50:14,17,20,22,25 51:8 52:7,10,12,14 52:22,24 53:2 54:7			

[page - person]

Page 22

54:7,14,16,22 55:16 55:21,25 56:11,19 58:14,15,16,16,18 58:24 59:7,20,21,24 60:3,8,11,18,21 61:5,6 62:5,20,21 62:21,22 63:3 65:16 67:16 68:17,20,24 69:21,23 70:2,9,11 70:12,14,17,17,18 70:19,22,24 71:3,5 71:17,25 72:2,8 73:11,11,21,22,22 73:23 74:19 92:17 92:24 94:9 95:2,18 97:3,13,25 98:4,10 98:14,17 99:17,24 100:9,11,13,19,22 100:24,25 101:4,6 101:16 102:2,6 103:7,8,11,11 106:19,22 107:11 107:11,12,12,14,15 107:17,17,18,19,24 107:24 108:23,24 108:25 109:2,3,7,8 109:12,13 110:9,9 110:19 111:15 112:9,15,15,17,18 112:20,24 113:2,5,6 113:7,10,18 114:15 115:3 123:15,17 125:17,20 126:3,6 127:13,13,14 129:9 130:18,18 131:6,6 131:17,17 134:5,8 137:6,20 140:15 141:6,10,13,16,19 141:20,22 144:3 151:19,19 154:21 161:16 175:11,14 180:5,6 181:11,12 181:13,15,15,19,24 181:24 182:6,10,11 182:12,14,14,16,23	182:24 184:2 185:9 188:6,24 193:24 194:3,4 195:21 204:10,11,13,16,16 207:20 210:4,16 211:7 pages 10:17 26:14 26:23 39:11 45:4 51:18 54:9,13 56:16 64:22 99:19 103:18 106:23 108:23 113:18 121:21 127:5,7 130:24 142:24 151:15 161:14 179:2 180:9 185:6 188:6 189:2 193:25 195:20 pagination 10:22 paid 164:12 paper 26:10,17 27:18 36:11 40:9,10 41:13,18 48:20 49:16,19,20,22,24 53:2,20 55:21 58:14 58:17,25 59:20,21 59:25 60:21 61:5 65:17 67:16 68:20 69:24 70:24 71:3,8 71:17,25 72:8,14 73:16,24 77:19 78:3 78:19 80:23 81:8 84:11,17 86:22 92:25 93:20,22,23 94:22,23,25 95:8,22 96:3,5,6,6,7,8 97:12 98:5,10 99:20 101:2 101:10 102:2 107:24 109:4,8 116:25 119:15 123:25 124:8,12 125:10 126:23,23 127:4 129:13,17,23 135:3,4,6,19 136:3 136:10 137:2 144:25 161:13	171:18 182:24 185:5,5,7 188:9,12 188:17,17,21 194:2 194:2,16,20 200:7 201:23 203:4 204:17 papers 23:3 24:13 24:13 25:16 29:6 39:7,9,20,21 53:5 paperwork 24:10,10 31:22 paragraphs 167:16 189:8 parallel 120:20 parents 162:9,16 164:18,23 165:2 166:5 park 1:21 2:14 part 14:2 19:24 23:18 37:24 67:10 68:23 102:21 104:9 110:10,13 112:21 124:12,18 125:9 143:5 146:12,14,21 146:22,23,25 176:3 177:23 182:16 participate 16:4 participated 157:4,6 166:18 particular 26:3 43:13,14 48:13 75:9 79:11 86:19,23,25 95:15 170:17 188:20 parties 31:6 209:17 party 40:24 passed 67:23 paste 69:11 patrick's 201:16 paul 1:5 7:19 23:7 39:13,14 50:4,5,7 51:3,7 55:21 58:17 58:19,23,24 59:20 59:23 62:25 65:19 66:12,14 67:15 68:9	68:12 69:18 70:3,11 71:7 92:16 97:19,25 98:9,12 100:20,21 101:4 103:5 182:11 182:11,16,23 183:12 204:16 pause 7:10 9:15 22:6 53:16 pay 6:6,10,23 149:20,22 paycheck 164:8 payment 4:20,24 206:15 payments 207:15 pc 52:9 pdf 43:8,15,16 45:23 46:2,4 60:4 116:13 116:15,18,18,20 175:22,24 176:14 177:21 peers 162:21 pen 23:17,18 90:25 penicillin 85:4 people 17:20,21 18:5 31:19 46:12 55:10 57:21 64:18 82:8 83:20 84:21 85:18 99:13 104:19 105:2 167:21 169:4 169:8,12,19 170:3,5 170:19 171:8,11 173:8 people's 133:14 perfection 132:4 perform 24:22 25:2 34:21 46:13 performed 47:8 75:25 period 84:19 155:5 168:5 periods 71:12 person 13:2 17:10 33:22 53:13 56:25 66:5 85:3 111:14 169:16,20,22
--	---	--	--

[person - previously]

Page 23

170:23,24 171:3 191:12 person's 20:19 185:15 personal 82:11 peter 1:19 208:9 209:11 210:5 211:6 211:21 phenomena 195:8 phenoxyethanol 90:10,13 philosophers 187:12 philosophical 187:7 187:10,21 phone 6:25 17:6 21:5,8 150:24,24 photo 47:4,10 132:4 171:23 172:8 photocopier 48:2 photocopies 66:19 photocopy 40:23 41:3,4,6,8 66:25 69:11 96:2 photograph 197:14 photographic 68:3 photographs 47:9 47:25 136:12 177:4 197:9 photoshop 42:10,15 45:12 48:8 73:7 171:23 172:9 174:2 phrase 24:11 100:3 physical 40:10 41:13,17,21 96:3 pick 188:19 picked 205:2 pickup 206:24 picture 113:8 172:14,19 182:15 205:5 pictures 174:19 181:25 204:10 piece 36:10 93:20,22 93:22 94:22,23,24 95:8,22 96:3,4,5,7,8	97:12 193:25 194:2 pieces 40:10 41:17 77:19 96:6 116:25 129:13,17,23 144:25 188:9,11 pineapples 114:7 118:10 119:6,9 piqued 63:4 pixels 48:6,7 pizza 163:5 place 55:6 95:11 121:18 130:4,5 143:3 placed 111:13 204:4 places 126:17 183:2 plaintiff 1:6 2:5 29:7 30:19,21,23 39:7,8,9 plaintiff's 119:23 120:8 137:6 138:17 138:18 139:3 177:25 178:5 plaintiffs 29:14 30:13,24 137:19 plastic 92:13 plausible 61:2 play 47:12 55:18 pleading 29:13,18 29:21 30:5,9,11 please 5:6 7:25 12:22 14:16 15:13 19:2 41:11 51:22,22 53:15,24 66:23 82:2 82:19 88:25 105:23 107:9 118:4 124:22 137:15 141:2 143:19 160:24 178:5 188:7 191:23 pleasure 15:24 plenty 46:11 plethora 98:24 plus 26:22 156:13 pocket 160:12 point 5:10 7:24 8:4 21:12,24 22:9 27:14	32:22 48:16 61:4 97:24 101:22 102:5 102:23 116:22 121:14 126:17 128:10 129:19 130:5 134:15 140:21 150:14 152:6 153:13 162:7 164:20 168:25 186:3,5 187:7,10 190:4,17 200:11,20 pointed 118:12 189:11 pointers 128:14 pointing 189:14 points 93:3 114:23 119:8,8 poor 56:3,8 pop 147:13,15 popped 27:13 pops 57:8 population 170:4,5 portion 141:15 144:2 148:25 portions 10:7,11 16:18 73:19 82:12 83:12 123:3,6,14,17 145:20,23,24 146:9 147:9 180:11 181:16 position 65:21 170:17 possession 135:13 possibilities 95:14 98:25 147:7,9,12 possibility 32:17,24 33:17 possible 101:4 102:12 146:9,14,17 146:24 147:2,4 187:24 191:5 193:12,18 199:12 203:5,25 possibly 33:14 47:22 147:16 194:12	post 70:14 postal 41:19 potential 101:12 192:11 193:2,3 potentially 85:9 184:24 powder 82:9 powerful 156:6 160:14 practice 51:23 94:11 94:13 162:14 precise 55:11 69:10 precisely 57:3 precision 205:14 predamaged 185:23 predecessor 166:2 prefer 122:16 203:23 preferences 194:6 prepared 4:19 73:14 presence 161:25 present 3:2 10:23 25:13 28:3,5,9 76:8 presented 22:19 24:3 27:24 81:9 151:23 presenting 47:14 presses 57:23 pressure 54:20 presume 3:20 pretend 42:22 pretty 26:14 60:13 64:18 65:13 72:15 83:20 127:12 130:25 137:11 140:6 162:17 165:3 174:17 175:5 previous 33:19 64:3 111:21 153:19 previously 25:15 88:11 95:16 99:4 120:21 123:20 144:7 146:2 161:24 201:25
--	--	--	---

[principal - questions]

Page 24

principal 135:21 print 32:2 106:16 188:7,8 192:22 193:4,9,24 printed 11:10,18,20 16:18 98:22 107:2 107:13 108:15 112:2,7 116:6,13 117:22 141:19 142:7 146:8 183:10 186:18,19 188:5,17 190:18 191:13,19 191:20 192:2 printer 116:7 142:8 147:18,20 186:19 187:25 188:10 190:4,5,9 191:2,3 191:19 192:20,21 192:22,23 193:10 193:20,21 194:5 printers 26:18 62:11 186:15 190:18,23 191:14,21 192:3,4 192:10,18,19,25 193:8,17 196:6,7 printing 22:18 57:23 61:5 116:8 196:5 printout 11:3 62:8 62:12 98:18 109:15 116:6 117:10 143:5 183:7 printouts 62:16 107:23 110:4,5 116:9,24 117:2 142:2 187:19 200:2 prior 13:23 16:22 22:23 23:22 24:17 44:11 45:24 150:12 150:16 172:18 privileged 151:8 probably 20:11 43:5 48:12 93:16 96:24 156:6 188:15	problem 6:20 8:2 21:10,21 47:3,5 55:9 84:3 85:21 143:24 151:4 169:21 194:14 problematic 82:10 154:4 problems 154:7 procedure 168:7,15 procedures 202:18 202:22 203:2 proceed 3:7,18,20 4:5 7:7 53:24 105:16 proceeded 139:11 proceedings 4:1 5:1 6:1 7:11 process 148:6,9 162:4,5 168:2,6 171:4 processed 116:13 processes 148:13 processing 116:15 produce 175:21,23 175:23 produced 22:10 67:5 119:17 producing 72:17 177:23 product 33:6 86:6 products 85:24 90:22 91:3 professional 1:22 13:24 156:12 162:20 209:8 professor 14:13 15:25 104:10 152:7 program 42:10,15 172:13,23 173:3 programs 48:8 project 84:16 97:11 154:11,11 projected 97:14 155:18	promise 78:23 prompted 64:12 proper 114:9 124:19 183:17 187:24,25 properly 57:2 130:14 139:8 143:20 properties 45:18 56:15 propose 5:11 proposed 169:16 provide 32:11 46:6 65:9,11 72:18 110:22 111:5 149:3 179:10 provided 10:5,6 42:4 43:21 44:10,14 44:21 58:19 63:7 89:16 90:4 110:25 129:7 176:12 179:15,16,19,20 public 1:23 7:14 88:12 208:15 209:8 211:25 publisher 172:20 purport 45:4 115:14 purporting 41:13 purpose 52:8 83:11 84:10 120:11 purposes 13:20 pursuit 52:15 put 6:12 11:5 16:22 48:15 105:9 162:6 167:8,18 170:9 201:24 205:2 206:11,22 putting 91:15,19 93:19 96:20 204:4	44:25 45:13 46:13 qualify 89:2 qualitative 71:6 139:6 199:6 qualitatively 60:9 101:2 137:15 quality 35:16,19,20 36:16 54:19,19,25 55:3,8,14,17,18,20 55:23 56:3,8,19,23 57:15 59:5,9,13 60:19 66:6 68:7,25 69:4 70:10,23,24 73:21 85:9 97:23,24 98:8 145:8 176:6,9 180:12 quantify 122:8 quantitative 71:6 139:6 199:6 quantitatively 60:9 101:3 137:16 quantity 59:5,9,13 97:23,24 quantum 200:3 question 7:25 21:20 30:12 33:7,12 37:5 40:20 42:8 65:14 68:24 100:17,18 101:8 111:21 117:10 122:4 133:2 135:2,17 144:15 162:3 165:3,7,13 166:25 185:2,24 186:6,24 189:6,7 191:4,6 192:14 193:6 196:20 199:22 205:12 questioned 157:16 162:12 167:24 questioning 91:5 questions 20:4 32:4 111:18 135:16,17 164:22 166:20,21 186:16 189:13 205:7,13,18
--	---	--	---

[quick - rephrase]

Page 25

quick 149:10 quickly 60:16 quite 34:5 63:5 85:3 118:7 170:15 183:13 quotation 16:20 quote 187:3 quotes 39:3	real 95:24 126:25 136:25 174:11 realize 92:14 realized 85:3,4 really 3:14 11:11 25:25 30:4 48:14 56:21 61:24 65:7 75:9 105:7 115:10 117:7 122:12 127:7 127:25 139:8 140:7 143:2 155:21 160:10 170:13 174:10,16 175:19 185:11,21 186:10 196:4 200:14,14 rearrange 4:8 rearranged 4:13 reason 49:4 69:7 83:20 85:20 123:5 188:16 211:7 reasons 48:23 49:2 85:19 92:21 147:24 148:3 189:8,12 192:11 193:13 rebooted 154:3 recall 20:12 29:4 31:12 35:17 65:7 79:25 80:10 86:14 91:16 92:18,20 125:19 126:2,5 129:16,24,25 153:21 154:5,9,24 156:4 166:20,21,25 179:25 189:13,14 190:15 197:23 198:2,15 receive 43:4 received 4:24,25 43:6,8,11,20,22,23 44:22 64:16 109:17 recess 140:19 149:11,13 recognize 109:15,24 110:5	recollection 10:10 51:18 80:3 178:22 recommendation 81:11 105:4,8 record 3:5 6:10 8:24 9:7 53:15 54:23 67:11 107:9 108:21 125:23 131:20 165:13 173:22 174:6 190:14 196:3 203:16 206:11 207:11 209:14 recorded 136:6,19 151:17 recording 207:9 records 131:15 173:15 195:3 rectangles 26:24,25 red 201:17 202:16 redacted 9:24 10:7 10:11,11 12:3 redaction 11:18 redactions 10:13 redirected 85:7 redone 174:11 reduced 114:12,14 117:2 118:25 121:5 122:9 181:12 204:11 reducing 204:8 redundant 123:12 refer 31:8 40:8 79:11 113:16 referred 40:14 42:21,24 84:13 116:12,22 181:21 referring 36:16 37:25 75:18 77:22 79:20 86:5 111:9,18 112:17 122:24 154:16 185:18 reflect 130:9 136:25 reflected 127:16 refrigerator 156:7	regarded 162:17 regarding 40:14 47:8 63:8 72:6 79:22 81:12 103:2,6 103:8 118:21 150:8 register 77:25 registered 1:22 209:7 regular 5:9 156:5,10 159:11 regularly 89:6,8,12 related 53:12 104:16 131:4 148:6 148:8,8 161:21 209:17 relating 166:8 relation 43:6 relationship 13:25 relative 59:8 110:15 168:10 169:8 relatively 155:5 release 7:5 relevance 164:13,20 164:25 165:4 relevant 48:14 168:20 169:12 171:9 194:18 reluctant 189:6 relying 190:14 remember 17:9 20:16,18,21 31:2 50:19 63:21 87:2 88:23 94:4 115:7 174:21,23 189:20 190:6,7 205:17 remembered 94:3 remnants 86:11 removed 46:21 142:3 153:15 repeat 19:2 24:23 25:7 34:14 37:3 141:2 repetitious 99:3 rephrase 33:7
r			
r 2:2 7:12 39:15,15 88:2,10 146:22,22 172:21,21 209:2 radically 106:13 raised 24:5 46:7 ran 104:12 random 188:18 randomly 147:16 range 155:15 rapid 56:22 rapidly 54:20 rate 88:6 149:23 150:3,5 raw 111:2 reach 168:22 202:7 reached 117:21 reaction 26:11,17,20 26:23 27:21 133:23 134:9 135:9,18 136:2,5,8,17 137:24 138:23 139:21 reactions 161:11 read 14:7,12,15 15:3 30:8,11,12 35:2 64:11 77:4,7,12 78:20,25 127:23 128:3,25 129:14 readily 45:18 46:5 173:19 reading 23:20 49:11 61:18 63:19 64:17 readjust 193:22 readout 126:15 127:20 128:6,7,15 129:6			

[replaced - saw]

Page 26

replaced 153:15,25 replacement 159:21 reply 78:13 report 6:14 8:13,21 8:25 9:2,10 10:2,9 10:15,17 11:9,13,22 12:2 15:2,6,11,15 15:19,20,23 22:11 30:10 50:21 63:7 65:9,12 68:6 72:17 77:4,5,8,10,12,15,20 78:4 115:8 126:8,9 127:11 129:15 130:17 139:10,17 145:10 175:21 176:2,7,10,19 177:23 179:2 180:16 181:3,5 182:21 184:7,9 204:4,5 210:18 reported 127:17,18 127:19 reporter 1:23 8:13 8:20 169:11 207:6 209:8 reporting 211:2 reports 10:5,8 14:8 14:12,15 49:11 63:19 117:22 represent 7:19 170:5 representation 44:14 representations 142:22 representative 154:7 represented 43:12 184:9 194:22 representing 6:10 reproduced 198:2 204:14 reputation 44:20 request 48:17 188:10 206:11	requesting 114:25 requests 210:11 require 170:7 174:13 200:14 required 171:16 requires 170:2 research 81:8 84:6 84:10,16 85:11 162:14 reserve 6:2 reservoir 147:19 residue 86:20 resins 76:10 resolve 46:7 respect 9:21 203:20 respectfully 164:16 respects 196:12 respond 3:16 response 78:12,12 78:13 rest 27:2 restrictive 66:25 result 70:6 71:15 99:22 118:13 133:16 142:15 190:23 resultant 189:24 resulted 146:7 162:5 resulting 137:21 189:18 190:5 193:9 results 15:7 65:10 72:3,4,18 84:23 125:23 130:9 131:5 192:23 resumed 88:11 retain 131:4 retained 16:10,14 16:17 18:11,19 19:8 19:9,13,16 22:10 104:20 163:8 retainer 149:18 150:6 retaining 18:18 retention 16:11 32:21	reverend 163:7 reverse 26:15,19 27:4,10 56:16 109:3 109:12 175:14 195:21 review 22:24 177:24 178:6,10 206:12 reviewed 29:6,13 64:14 100:14 129:11,15 173:11 181:2,3 reviewing 23:19 rgb 179:22 ridiculous 186:6 right 3:21,25 4:6 7:9 7:21 21:6 22:5 27:7 31:12 32:6 34:15 37:5 40:6,12 41:16 44:23 48:16 53:23 55:12 59:6 70:2 78:20 85:2 89:20 91:25 92:6 94:7 100:9 101:21 108:9 109:5 111:6,20 112:23 113:5 118:14 124:15 126:17 130:4,5 141:4 145:2 153:6 153:16 159:4 181:9 181:10 182:23 183:5 206:16 207:18 208:2 ring 178:17 rings 178:18 rise 200:19 river 187:13 rja 1:7 road 2:6 rocks 46:20 rocky 46:17 47:17 47:17,19 rodeo 155:13 romano 14:13 15:17 103:24 104:11,14 152:7,10	romano's 15:25 room 7:20 17:21 18:6 22:4 31:4 47:25 120:21 150:25 151:3 152:6 152:7,8,9,10,18,25 153:20,22 rotation 59:10 routine 26:2 rpr 209:25 rude 21:19 152:4 ruler 114:17 rules 165:14,17,17 rulings 210:12 run 57:15 104:24 148:2 162:8 172:25 running 162:18 163:10 russian 78:15 résumé 34:25
s			
s 2:2 25:4,4 81:3 88:2,2,2 131:25 211:7 sadly 41:7 safde 157:17 safely 166:5 sample 13:18,19 samples 20:19 33:22 48:18 49:3 51:9,12 51:14,16 52:7,8 76:2,5 saqte 157:17 sat 120:21 153:4 saturday 5:19 save 174:7 177:11 177:13 saved 131:7,15 saw 23:10,12 24:16 26:10 35:6,9 43:17 105:25 106:9 129:19 130:25 151:5 161:20 194:19,22 196:22			

[saw - settings]

Page 27

200:8 201:22 saying 5:6 8:3 11:15 62:5 83:7 91:23 96:7 122:17 129:25 133:8 138:20 139:14,23 153:9 171:6 180:4 181:2 191:25 192:2 202:21,22 says 9:9 10:18 29:22 29:23 62:2,2 107:11 108:24 130:17 170:11 scale 55:24 130:8,12 scan 28:17,21,25 29:8,9,15,17 30:14 30:16 31:13 39:11 39:24 45:11 58:19 100:14,23,25 106:9 109:16 110:10,13 110:19 111:14 113:18 115:8 117:11 123:15 130:24 131:6,11,13 133:17,21 134:5,13 134:17 135:4,14 137:9,21,23 138:5 138:16,17,18,19,22 139:15,19,20 140:14,15 141:6,11 141:12,22,24 146:6 146:8,8,10 148:14 161:3 182:17 189:18 196:18,19 198:17,25 199:8,8 199:20 200:7,17,18 200:25 scanned 24:7 25:15 28:13 45:5,24 58:20 59:25 68:3 69:11 98:20 106:8 110:16 110:20 119:25 137:6,20 138:2 143:8 151:14 189:10 196:9,11	199:21 201:3 scanner 28:16 67:6 114:22 115:4,16,20 131:13,16,24 132:3 132:10,17,22 133:5 133:7,7 137:13 138:25 139:3 148:19 177:5 189:17,19,21,22 199:11 scanners 133:14,19 134:11 136:7,17,19 136:24 189:11 199:11 scanning 25:24 28:10 59:12 61:10 115:19 136:24 148:6,8,12,16 151:24 178:8 scans 45:7 101:7 106:24 107:23,23 109:24 110:3,4,6,7 110:18,23 111:4,9 111:20,23 112:2 115:2,6,14,16,20 116:2 131:17 132:6 133:2,22 134:7,10 134:22 136:16,22 142:3,4,15,20 143:4 151:5 175:10 176:24 177:3 179:9 181:12,20,20 182:13 194:23,25 195:22 197:5,16,20 197:24 198:5,6 199:10 202:2,9 204:10,17 scenario 86:9 scene 96:18 schedules 4:8 science 173:7 183:18 scientific 102:10 117:21	scientifically 118:21 120:9 scintilla 196:16 scissors 48:2 scotland 86:16 screen 96:25 117:25 133:21 156:24 186:18 188:7 192:17 193:4 195:3 scripture 38:19 se 198:3 sec 9:13 second 24:24 38:16 38:20,23 50:3 52:24 53:2 60:20 63:3 65:6 68:23 74:6 92:17 99:17,18,24 115:8 135:23 140:18 153:18 156:3 160:2 193:20 security 62:10 see 13:3 18:6 24:2 35:25 42:4 47:20 52:22 68:18 69:10 70:21 94:10,13 96:13,16,18 98:8 101:4 102:5,13 104:13,24 109:5 112:12 113:9,12,23 115:23 122:12 136:10,21 143:16 143:19 160:8 171:4 175:11,13 179:17 181:7 182:17 183:2 183:6,11,13 185:19 186:10 187:2 188:23 190:19,25 191:3,6 194:25 197:12,14 198:12 200:25 201:15 seeing 22:23 29:4 31:12 63:18 93:21 95:2 118:14 129:16 197:23 198:3	seek 49:3 seen 23:5,8,25 28:17 28:23 29:18 30:17 30:21 39:4 41:4 43:12 50:5 54:5 56:19 59:17 60:11 68:9 70:10,15 71:7 93:3,4 94:4,6 99:13 102:13 108:16 136:11,16 196:17 197:20,24,25 198:10,14 segments 73:19 self 67:23,25 send 5:6,14 6:18 180:8 193:19 206:16,17,21 207:14 sending 206:14 sense 189:5 sensitivity 160:9 199:23 sent 3:11 5:6 58:22 98:19 100:4 175:24 176:15 177:21 206:15,20 sentence 68:14 separate 51:18 56:7 107:2 162:11 separated 121:12 separately 191:22 separators 56:9 71:13 series 205:13 service 41:19 serving 36:2 set 22:19 24:5 27:24 101:11 124:23 139:2,3 152:25 155:11 176:18 209:12,22 sets 156:21 175:13 setting 148:9 155:23 settings 114:22 115:5 116:8 131:12
--	--	---	---

[settings - somebody]

Page 28

131:16,19,21 132:14,21 133:15 136:21,24 137:13 148:16,20 189:17 189:19,22,23 193:4 193:14 setup 146:15 seven 150:14 severely 57:7 shade 27:20 138:7 shades 202:9,10 shaky 56:3 shalt 80:2 shampoo 86:11 shape 104:17 shaped 185:14 sheet 72:14 126:19 211:2 shepherd 171:3 shock 200:12 short 155:5 shortcut 100:3 shortly 22:15 show 53:11 77:23 showed 22:19 53:5 137:21 142:8 203:3 showing 24:17 29:15 179:21 181:25 shown 80:20 86:14 shows 56:21 71:5 135:10,12 side 8:8 11:24,24 14:3,9 20:8 26:15 29:16,16 34:17 77:18 85:10 138:15 138:15 150:25 151:2 194:2 196:17 196:17 204:12,12 sign 51:16,22 57:21 signature 12:25 20:15 37:22 50:3,6 50:7,10,11,12 51:7 52:12 53:8,19 54:14 54:16,19 55:7,11,15	55:21,25 56:11 58:13,15,17,19,24 58:24 59:20,21,23 59:24 60:3,8,10,13 60:14,17,21,23,25 61:12 62:23,25 65:16,19,20,20,23 66:4,6,10,13,15,18 66:20 67:3,15,16,18 67:22 68:2,8,10,17 68:19,19,22,24 69:8 69:14,21,22 70:3,4 70:9,11,18,19,22 71:3,4,7,10,14,18,19 71:19,20 72:7,7 73:16,21,22,23 93:15,19 94:4,6,8 94:10,21 95:16,17 95:18,23,24,25,25 96:5,7,12,19,25 97:11,14,14,18,20 97:25 98:4,10,12,13 99:4,6 100:16,19,22 101:5,6,9,14,16,20 101:21,24 102:2,6,7 103:5 180:12 183:12 signatures 13:2,6,9 13:18 23:16 33:20 49:9 51:4 52:11 54:7,9 55:4 57:9 58:5,9 67:8 68:16 69:4 73:19 92:16,24 101:12 107:20,20 109:10 signed 40:24 52:17 52:18 significance 186:9 186:12 199:5,16 significant 126:25 136:5,15 175:6 202:19 signing 58:6 signs 68:12,15	silicon 156:23 similar 20:3 42:11 42:16 60:9 69:20 73:8 144:18 156:14 similarity 58:5,6 119:8 similarly 60:7 71:9 181:19 simple 46:5 165:3 171:15 175:12 189:7 simply 138:14 simulated 69:2 simulation 55:7,19 57:10,13 93:25,25 94:12 simulations 69:5 94:2,16 single 169:16,20 196:5 singly 123:13 sir 13:14 33:13 63:22 79:13 90:14 91:19 107:22 113:11,24 122:16 122:23 123:19 124:17 138:14 143:18 174:21 184:22 185:16,17 193:6 203:5 sit 31:12 94:12 168:14 187:16 sitting 17:21 31:4 94:6 120:21 179:6 181:8 situation 105:18 situations 117:14,17 six 50:8,14,17,22,25 70:14 172:6 207:13 sixth 55:25 70:17 size 59:9 114:12 117:3,3 118:25 181:12,17 204:8 skew 59:7	ski 47:20 skiing 47:19 skillfully 60:15 skin 91:21,22,23 skyline 120:22 skylines 122:5 slight 136:18 202:9 slightly 130:8 134:6 183:24 194:21 202:24 slopes 47:20 slow 68:25 69:3 slowly 57:3,5 small 105:5 116:25 118:25 152:8 156:24 202:8 smaller 114:16 130:3 smooth 56:22 smoothly 54:20 snail 57:4 snail's 57:4 snapshot 47:12 snyder 17:15 soap 89:15,16,21,22 89:25 90:4 soaps 90:9,19 society 157:16 sockets 159:20 soft 92:11,12 software 53:20 69:23 132:5,9,13,24 133:15,15 136:21 137:13 155:14,17 155:20 171:24 172:9,14,18,19,23 173:13,16 174:3 175:16 193:15,21 193:22 soles 140:2 solvent 90:17,18,22 solvents 76:10 somebody 37:11 46:9 47:13,21 50:3 51:21 56:21 57:8
---	--	---	--

[somebody - styling]

Page 29

58:6 77:23 116:19 137:25 167:6,20 168:13 170:8,11,16 171:17 someone's 92:9 someplace 47:16 51:11,21 somewhat 201:18 204:18 soon 5:13 24:16 130:25 sorry 12:10 29:20 30:23 35:25 38:25 41:11 48:25 64:10 66:23 68:13 74:12 75:14 99:15 100:10 101:15 106:22 108:16 111:6 115:23 118:4 124:22 133:11 141:14 143:14 148:24 sort 13:12 21:4,5,8 21:13 26:20 33:22 61:23 65:23 84:24 93:21 95:9 105:15 127:9 148:24 158:8 163:8 174:6 189:6 sorts 21:16 sounds 3:8 21:3,16 source 96:12,14,15 96:23 114:19 sources 156:2 southern 120:25 163:12,16 southwell 2:16 3:3,3 3:9 4:2 5:3,25 6:21 7:9 8:15,18,23 9:4 12:9,11 17:22,23 18:8 21:3,11 28:20 31:18 32:6 33:8 53:14,23 73:25 74:10,14 76:18 88:4 90:11 100:15 106:18,21,23	108:17 109:19,21 111:8 140:17 149:8 151:7 158:24 159:4 161:5 164:13,19,25 165:4,8,11 167:5 180:20 184:19 186:4 198:21 201:5 201:7,10 203:18 204:6 205:9 206:7 206:10,19 207:2,7 207:12,18 208:2 210:6 southwestern 157:17 space 9:24 speak 8:6 17:4 speaking 8:6 21:17 specialized 46:12 specific 15:13 52:8 65:24 70:15 82:2 103:13 125:4 138:10 156:17 specifically 3:15 19:7 20:9 49:9 54:14 77:9 80:2 89:24 97:20 104:19 113:12 specification 50:15 50:17,24 53:20 54:5 54:8,13,17 55:16 56:2,24 60:11 66:16 68:10,18 69:24 70:18 73:23 160:4 180:7,10 specifics 100:11 154:9 speckin 178:17,18 178:20 179:7,7 specs 159:13,16,18 speculate 81:17 83:5 83:5 speculating 148:25 148:25 speculation 109:22 149:2	speed 54:18 70:21 spelling 39:16 spent 158:20 186:13 207:6 spilled 84:14 split 179:21,21 spoke 17:10,19 spoken 73:10 sripriya 2:17 18:7 ss 209:4 st 201:16 stack 78:19 stage 25:19 stand 7:9 standard 18:17,20 18:22 51:23 79:12 79:14,15,22 124:7,9 124:11,16,18 125:16,19 129:5 150:4 166:15 167:8 167:10,11,17 168:18,21,22 169:6 169:14,17,20,23 170:2,4,10,22,23,24 171:9,10,13 standardized 167:4 standards 79:5,8,18 80:2,4 124:23 125:3 125:9,13 166:7,11 166:19,24 167:24 168:3 169:21 171:5 186:23,25 standby 150:10,11 standing 178:24 staple 184:2 start 49:14 58:15 108:7 139:5 144:8 168:17 172:4 176:18 started 64:17 76:14 101:10 153:24 starting 38:14 40:9 40:11 67:17 89:4 101:18 102:3 106:7	state 1:23 121:10 158:13 164:3 209:3 209:9 stated 160:20 statement 52:20 164:10 203:11,16 203:21,23,24 states 1:2 163:6 static 81:4 steering 86:22 step 167:20 168:14 174:5,5 stepped 162:15 steps 142:3 stereomicroscope 151:20,21 stewart 49:12 51:6 58:2 63:20 64:2 178:6,23 stewart's 61:19 64:13 stick 77:16 166:4 stop 151:10 152:13 170:19 stories 121:3,4 story 121:10 183:21 straight 56:5,6 strange 26:11 streetfax 50:23 99:14,18 100:12,20 102:9 strength 127:16,17 string 30:2 stripped 131:8 stroke 60:20 strokes 54:21 strong 86:24 studied 57:20 stuff 100:3 196:3,4 stuffs 76:8 stumbled 85:5 style 60:14 70:21 128:2,5,6 styling 167:15
--	--	---	---

stylistic 167:10 subatomic 200:3 subcategory 94:2 subcommittee 167:19 171:12 subjects 104:16 submit 11:13 12:20 34:16,25 submitted 9:10 10:2 10:23 11:9,12 18:16 116:15,19,20 submitting 176:2 subscribed 208:11 211:22 subsequent 17:13 81:10 85:16 subsequently 26:2 80:24 158:4 subset 93:25 substance 82:21,24 82:25 92:12 subsumed 98:25 subtle 121:5 130:7 136:6,15 138:12 subtractions 110:15 suddenly 56:25 suffice 184:22 suggest 34:10,16 52:23 93:16 104:21 121:16 123:9 137:3 suggested 81:9 suggesting 192:16 suggestions 157:8 suggests 125:19,21 summarize 22:22 superimposed 73:3 superimposing 73:9 supplied 57:20 supply 31:17 support 9:11 suppose 186:7 supposed 50:11 56:6 198:8 sure 8:3,9 10:19,24 14:7 21:20 25:8	28:14 31:18,20 33:16 34:15 45:19 57:18,19 72:24 73:4 73:5 78:19 81:23 88:25 100:17 102:22 104:15 105:4 109:22 118:23 122:6 124:9 138:2 143:17,21 147:17 150:13 151:15 157:21 161:22 162:10 172:14 182:3 206:5 surface 80:23 173:19 surprise 198:16,19 198:23 199:21 200:12,25 201:6,20 201:21 202:5 surprised 134:12 199:13,18 200:20 200:21 surprising 200:9,14 201:19 202:6 swim 187:13 switch 22:5 sworn 7:13 88:12 208:11 209:13 211:22 system 11:6 155:16 157:15,23	129:8 130:6 136:20 140:19,23,25 149:7 149:10 175:10 182:20,22 188:5,11 taken 68:3 76:2 111:13 114:21 115:3 134:7,13,14 135:6 136:12 138:22 140:15 141:12,23 143:3 146:8 149:13 153:19,21 175:10 180:10 182:7 194:15,25 195:22 200:17,18 201:23 takes 138:20 talk 8:12 21:9 65:13 75:20,20 79:8 111:7 118:7 173:25 189:10 talked 4:17 64:5 91:12 92:15 111:20 140:11 150:20 184:11 190:2 talking 13:12 24:12 40:7 47:11 50:16 62:19,22,23 65:19 77:9 78:2 94:20 99:11 100:7 103:16 125:5 135:2 138:11 138:12 140:4 141:15 152:20 169:6 177:12 188:4 191:16 193:7 200:2 200:4,4,22 talks 79:15 tan 119:17 121:20 138:8,9,9,13 183:6 183:16,17,19 target 156:24 task 25:25 26:2,21 34:21 tasked 49:5,8,10 61:14	tasks 22:8 24:21,25 25:4,5,10,18,21 taxpayer 121:11 technical 50:23 131:9 205:4 technicalities 73:7 technique 72:25 167:4,7,7,8 techniques 84:18 technological 7:24 technologies 127:24 technology 8:9 18:25 36:2 53:25 80:25 85:13 88:17 telephone 2:10 7:23 53:16 television 156:21 174:19 175:13 televisions 174:20 196:2 tell 5:22 9:19 14:4 35:2 42:14 45:6 46:18,19 57:13 66:3 69:17,17 78:17,21 94:19 151:2,5 183:18 192:21 193:21 telling 17:18 142:14 143:23 146:11 tells 191:13 ten 149:9 tend 31:5 64:19 162:7 tenths 129:2 term 12:22 34:2 41:7 54:25 59:18 65:24 66:2,8 70:15 80:21 90:15 95:17 131:9 152:9 161:12 187:2,3 195:4 205:4 terminal 54:21 terminology 67:15 187:21 terms 18:17,20 25:20 53:11 59:6
---	--	---	---

[terms - track]

Page 31

60:19 73:6 119:14 138:9 150:4 160:25 202:9 terrible 57:14 68:7 tertiary 135:20 testified 7:15 88:13 101:18 testimony 92:19 150:8,8 209:15 texas 172:22 text 188:20,20 190:20,21 191:11 textbooks 57:20 thank 5:4 8:5 32:8 33:8,9 40:18 43:9 66:9 74:5 142:18 170:13 208:4 theoretically 4:3 thereof 99:5 thicker 127:10 thickness 123:25 124:8,13 125:10 127:6,8 thing 11:11 13:19 30:6 31:21 55:5 57:8 114:11 116:12 118:10 119:2 146:21 171:16 192:15 203:6 things 3:6,10 4:13 11:23 24:20 36:9 45:16 48:3,7 67:21 78:14 80:14 86:21 127:22 144:22 162:7 170:14 175:4 175:19 185:18 187:4,7,8 189:17 194:9,9,12,12 think 7:19 10:4 13:13 15:24 20:14 24:23 25:3 32:9 35:23 36:9,18 37:14 39:14 40:22 43:4 50:14 51:17 63:21 64:4,21 67:23,25	70:8 79:18,25 80:6 83:16 91:5,7 96:20 105:17 113:17 114:23 115:10 118:3 119:13 123:10,10 124:14 125:14 129:14,19 130:3,17 131:9 133:6 136:14 143:14 144:6 145:4 151:18,25 154:3 156:7 157:21 158:7 162:3 163:11 164:8 164:9,16 166:4 167:13 170:18,21 172:13 173:5,7 177:21 178:23 180:13 182:15 190:3,7,11,13,15 191:5 192:13 196:23 198:13,13 199:3 200:16 205:4 205:12 206:4,4 thinking 92:10 thinner 126:19 127:10 third 107:17 124:24 thirdhand 61:25 thirds 16:12 170:19 171:14 thirty 207:13 thoroughly 195:9,15 195:16 thou 80:2 thought 170:13 thousands 13:5 125:2,2 thousandths 126:16 129:3 three 88:7 94:13 106:22,23 107:12 126:17 147:8,8,13 147:15 148:3 150:12,16 158:25 182:25	throat 49:7 129:8 throughput 168:3 thursday 4:10 tie 39:24 tiff 39:11 41:23 42:24 43:20 44:8 45:3,5,6,9,21,25 46:15,23 48:15 58:20 60:6 98:19,21 99:25 100:4 184:4 tiffs 44:24 47:6 till 25:19 time 13:23 16:14,24 19:8 21:9 22:9 28:2 36:4,7,20 37:5,9 57:9 76:15 78:24 80:11 83:14 84:19 87:7 88:3 89:12 114:23 126:23 132:6 134:13 140:19 143:11,13 149:7,16 158:9 159:10 164:21 168:5 174:11 187:11,16,16 195:10 196:9,9,22 197:7 198:2,2,15 206:5 207:5,6 208:6 times 12:16,18,24 18:10 44:3 75:2,7 110:21 153:4 158:22 163:3,13 tints 175:4 tip 120:25 tobacco 51:25 today 3:24 7:24 29:22 44:7 65:6 104:12 186:24 206:25 told 44:18 64:19 85:2 tomorrow 147:6 ton 112:9 toner 121:13	tools 175:16 top 10:17 11:4,19 26:24,25 27:6,7 39:3 50:20 67:12,13 77:19 94:23,24 95:8 96:5,6,8 97:3 107:11 110:8 140:2 148:11 161:14,16 175:11 183:11 185:9 topic 34:10 35:18 81:17 topics 36:13,16,18 tops 195:20 total 69:9 totally 77:14 187:8 197:17,18 touch 75:2,6,8 touched 74:21,23 86:2 106:4 205:15 205:23 tough 114:17 town 70:13 trace 93:20 94:22,25 97:2 traceable 110:17 traced 69:16,17 72:11,11,12,13 110:17 traces 96:19 tracing 55:11,19 57:11,14,16 58:11 58:11 59:14,15,22 60:24,25 65:20 66:7 67:19 69:8,15 72:5 72:9 92:15,22 93:2 93:8,15,23 94:17,18 94:20 95:3,6,7,11 96:10 97:5,10,13 98:6,12 99:6,9,10 101:13,19,25 102:8 tracings 69:6 92:20 93:12 97:19 track 158:9
---	--	---	---

[tracking - tytell]

Page 32

tracking 207:15	tube 156:24	191:16,17,18,21	95:1 96:1 97:1 98:1
tracks 100:25	turn 27:6 116:18	192:3,4,18,19,19,25	99:1 100:1 101:1
trade 158:8	128:3	193:8,17,24,25	102:1 103:1 104:1
traditional 128:6	turned 174:4 195:11	194:9 195:16,20	105:1 106:1,17
trained 12:13 20:5	turning 44:12 128:5	196:5,6 199:10	107:1,6,8,13,18
training 13:22 48:5	turns 155:20	200:2 202:9	108:1,8,8,11,18,21
transcript 206:12	tv 156:24	type 21:8 82:3	109:1,14,15 110:1
210:8	tv 174:25 175:3	115:20 150:2	111:1 112:1,7,17
transfer 69:11,12	twenty 46:24 48:11	193:14	113:1,16,22 114:1
86:3,12	67:4	types 13:8,17 75:12	115:1 116:1 117:1
transferred 85:25	twice 57:22 58:7	180:3	118:1,11,12 119:1
86:21 91:24 106:2	187:13	typical 6:2	120:1,13,13 121:1,7
transferring 83:22	two 16:6,12,18	typically 5:19 59:14	122:1,22 123:1,15
92:8	22:25 26:8,24 38:25	68:9 69:4	123:16,18 124:1
transmitted 45:24	39:2,11,11 40:10,13	typography 16:17	125:1 126:1 127:1
transparent 134:24	41:17,21 44:8 45:3	16:22,25 35:8 42:22	127:14 128:1 129:1
travel 4:7,12	46:15 49:10 53:10	tytell 1:19 3:2,19 4:9	130:1 131:1 132:1
traveling 3:24	54:9 58:4,8 64:5	5:11 7:1,6,11,18 8:1	133:1 134:1 135:1
treasury 164:9	65:2 67:20 69:24	8:14,21,22,25 9:1	136:1 137:1 138:1
trees 46:21	74:19 88:5 92:24	9:22 10:1,3 11:1,22	139:1 140:1 141:1,3
triangle 27:9,16	96:6 102:2 106:19	12:1,6 13:1 14:1	141:20 142:1,9
175:14 195:21	106:24 107:23,23	15:1 16:1 17:1 18:1	143:1,6,7 144:1,3
tried 25:13 33:22	108:8 111:15	18:23 19:1 20:1	145:1,25,25 146:1,7
trips 55:9	114:22 115:2,6,14	21:1,18 22:1,7 23:1	146:9 147:1 148:1
trouble 140:7	115:25 116:9,24,25	24:1 25:1 26:1 27:1	149:1,14 150:1
troubles 84:13	117:25 118:11,19	28:1,22 29:1,22	151:1 152:1 153:1
true 42:20 58:2 89:3	119:5 120:16,16	30:1 31:1 32:1,9	154:1 155:1 156:1
91:19 124:2 135:11	121:20,21,22,25	33:1 34:1 35:1 36:1	157:1 158:1 159:1,6
142:22 152:19	122:5,7 125:17	37:1 38:1 39:1 40:1	160:1 161:1 162:1
162:9 168:11,21	127:5 128:11,13	41:1 42:1 43:1 44:1	162:12 163:1 164:1
169:14 174:12	129:12,17,23	45:1,3 46:1 47:1	165:1 166:1 167:1
184:13 186:17	130:12 134:9 135:6	48:1,24 49:1 50:1	168:1 169:1 170:1
190:24 192:12	136:6,16 138:15	50:22 51:1 52:1	171:1 172:1 173:1
193:11 198:23	141:16,24 144:4,11	53:1,17 54:1 55:1	174:1 175:1 176:1
201:6 209:14	144:19,22,24 145:7	56:1 57:1 58:1 59:1	177:1 178:1 179:1,4
try 3:23 41:12 45:17	145:11 147:25	60:1 61:1 62:1 63:1	180:1,24,25 181:1,9
48:3 52:4 89:6	148:2,12,12 154:3	64:1 65:1 66:1 67:1	182:1,22 183:1
91:14 94:5 117:25	156:13 157:10	67:12 68:1 69:1	184:1,10 185:1
118:4 122:11	170:19 171:14	70:1 71:1 72:1 73:1	186:1 187:1,14
139:11 146:19	175:11 181:11	74:1,7 75:1 76:1	188:1 189:1 190:1
201:14	182:13 185:6	77:1 78:1,5 79:1	191:1 192:1 193:1
trying 25:8 37:21	186:12,17,18 187:4	80:1 81:1 82:1 83:1	194:1 195:1 196:1
63:20 84:20 86:25	187:7,8,19 188:5,6	84:1 85:1 86:1 87:1	197:1 198:1 199:1
93:21 94:24	188:8,9,11 189:2,11	88:16 89:1 90:1	200:1 201:1 202:1
	190:18,23 191:9,14	91:1 92:1 93:1 94:1	203:1 204:1 205:1

[tytell - wash]

Page 33

205:10 206:1 207:1 208:1,9 209:11 210:5,16,18 211:6 211:21 tytell's 3:23 6:13 9:2 164:22	unit 2:7 126:14,15 127:21 128:17,25 129:10 158:12,13 united 1:2 163:6 units 128:16,25 129:3 universally 81:24 universe 117:17 unknown 142:2 unnecessarily 54:24 unusual 25:22 26:19 26:22 27:21 161:25 upgraded 158:5 upper 109:5 use 26:17 48:14 51:24 62:17 66:24 67:14 68:11 70:12 80:13,21,25 89:15 89:21 95:17,19 124:4,7,12,19 125:10 137:18 145:6,10 152:25 153:12,17 155:12 158:21 159:20 167:14 172:2 175:12,16,18 180:15 193:5 useful 26:4 85:9 114:24 172:13 uses 71:11 usually 51:20 57:12 69:16 119:2 128:8 143:24 170:9 171:14 utilized 154:13,17 154:17,19,23 uv 154:11,11,22 181:25 195:10,15	vail 47:18,18,19 valery 23:7 valid 115:11 117:4 118:21 120:10 170:9 189:12,15 vapor 87:2 variables 123:10,12 199:12 variation 54:21 57:24,25 58:3,7 59:3,4 126:18 183:15 199:9 various 10:17 59:25 64:24 73:10 155:15 158:22 venture 122:14 verbally 63:11 veritext 3:4 211:2 vermont 163:19,21 163:23 vernier 128:2 version 132:5,11 184:3,4 versions 177:11,14 180:5 versus 11:20 75:7 117:23 138:13 163:6 vibrant 118:19 137:8,17 143:11,15 143:22 video 156:18,18,19 156:20,21,23 157:15 178:23 195:2,2,8,12 videos 136:11 view 120:22 viewed 24:7 202:2 virtually 55:24 85:12 117:18,18 130:19 134:24 visible 195:8,12,16 200:23 visual 31:13 81:6	visualize 80:24 visually 42:14 46:18 133:22 144:5,10 192:5 198:6,18 199:2 voice 44:7 volumes 124:23,23 171:5 vote 170:3 voting 170:4,20 vs 1:7 vsc 134:18 152:14 152:25 153:16,17 154:8,22 155:4,15 155:24 156:11,16 156:17 157:7,22,24 158:2,5,6,12,17,20 159:7 177:7 178:20 182:7,8
u		w	
u.s. 41:19 105:3 158:16 163:4,14,16 163:21 164:3,5,9 ultra 55:4 ultraviolet 26:10,11 26:13 27:22 136:3,4 136:8,12 156:10 161:11 195:7 unable 69:17 unanimity 169:25 170:7 unclear 135:2 underlying 116:11 underneath 94:25 95:2 97:13 understand 6:9 24:12 25:8 29:11 34:4 39:10 43:23 50:16 76:4 77:14,24 78:9 90:16 91:5 92:21 95:20 100:6 100:18 113:4 115:13 122:16 180:2 185:21 understanding 3:22 16:13,16 40:7 90:24 91:10 understood 26:2 76:2 78:22 178:7 undertake 17:7 unfair 117:9 118:17 unfortunate 181:7 unfortunately 158:9 uniformly 26:14 161:13 unintelligible 169:10	v 1:19 7:12 88:10 208:9 209:11 210:5 211:5,6,21 vague 139:7	w 32:14 wait 12:11 88:24 156:2 191:15 want 3:17,20 4:5,20 9:19 17:18 21:20 28:25 34:14 37:2 45:5 54:23 70:12 80:20 83:6 85:15 93:19 94:22 95:18 106:18 107:2 111:7 111:8 115:12 117:7 118:7 119:2 122:14 125:14 140:8 147:6 149:7 186:15 193:23 194:11 200:10 wanted 8:12 74:3,4 88:4,20 107:4 114:10 wants 167:3,6 war 165:25 166:4 warren 2:6 wash 89:8,17	

[washed - yeah]

Page 34

washed 89:5,11,13 washington 158:21 164:6 watch 128:12,13 watches 128:12 watching 85:20 water 139:24,25 watt 156:7,8 159:11 wattage 160:11 wavelength 86:25 wax 92:12 way 4:23 12:24 31:11 34:7 44:13 51:14 57:12,22 63:2 73:5 88:22 92:2 96:22 101:3 104:17 110:17 120:20 121:19 124:19 129:21 131:10 157:3 158:9 162:7 165:22 176:4 181:18 182:5 183:23 185:11 188:21 190:19 191:13 193:22 202:25 205:5 209:19 ways 92:4,7 93:11 93:14 we've 12:4 50:14 52:6 67:23 150:15 159:2 wear 79:22 80:2 82:13 83:12,21 wearing 79:16 80:17 80:19 82:3,17 83:18 weeds 73:7 week 63:22 65:2,6 137:20 138:17,23 139:19 150:15 158:20 weeks 65:5 94:13 weird 30:25 went 5:9 64:21 118:6 144:6,15	152:8 156:19,24 western 1:3 wet 140:3 wheels 86:22 whereof 209:21 white 27:19 43:16 43:17,19 134:6,6,14 134:17,19,22,25 135:4 156:3,10 159:9 160:3 161:15 174:25 195:19 whited 160:16 willing 17:7 117:8 window 96:15,20 windows 132:10 winter 158:7 wisecrack 187:12 wish 119:12 196:7 withdrawn 81:12 witness 6:2 7:13 8:13 12:10 21:16 74:16 88:11 165:7 209:11,15,21 210:4 wonderful 31:3 175:16 wonderfully 117:16 wondering 62:20 91:8 word 9:24 24:24 40:17 43:10 46:23 66:24 105:15 112:12 113:13,22 118:18 120:15 122:2 123:20 137:18 139:9 143:15 144:13,21 144:22 145:3,6,9 146:17 167:14 181:22,23 183:10 186:22 192:13 193:5 194:7 205:5 wording 50:20 80:11 words 11:25 12:2 52:7 78:22 112:16	114:2 143:15,17,21 143:22,23,24 145:10 191:20 wordy 64:19 work 16:19,19 17:7 18:15 22:25 28:10 28:18 29:2,15 30:14 31:14 32:18,25 33:6 33:14 34:16 38:4,5 38:11,16 39:2,22 40:2,5 41:16 45:16 51:2 52:2,14 53:2 53:12,19 54:9,10,12 55:21 56:11,16,19 58:25 60:18,22 65:17 68:20,24 69:21 70:24 71:17 71:25 72:2,8 73:24 74:8,9 86:18 91:18 92:18,25 98:2,5,13 99:19 100:23 101:9 101:17 102:17 103:2,12 105:3 107:15,24 108:25 109:4,8,16 110:20 111:15 112:19,20 113:19 115:3 119:15,25 123:24 125:18 129:13,18 130:19 131:18 132:18 133:3,17 141:7,13,17,21,23 154:21 156:11 158:17 162:24 163:24 164:9,11,18 164:23 165:2,19 166:5 172:2,5,24 178:8 180:5,6,9 182:24 184:12,18 194:15 196:18 197:21 198:6,11 205:16,24 worked 87:4,5 150:6 157:25 163:12	working 19:18 72:22 84:22 104:22 116:10 149:16 158:14 173:20 workshop 157:14,21 world 46:25 85:18 158:8 165:25 166:3 worn 75:10 79:10 worth 186:2,2 wow 139:18 140:6,6 write 57:2 167:9,21 168:13,14 writer 66:11 writes 170:23 writing 23:24 49:15 51:12,13 52:12 54:6 54:8 56:22 57:2,5 69:3 70:21 71:24 72:2 81:7 84:9,24 85:8 93:19 94:9 96:9 166:19 183:14 191:11 written 15:18 18:14 52:5 54:20 58:9 66:10 67:18,22 68:8 68:11,19,22 166:12 167:23,25 wrong 24:11 57:7 170:12,18 171:2 187:20 wrote 33:23 51:16 52:19,22 66:5
x			
x 172:21 210:2			
y			
y 7:12 88:10 yag 87:3 yard 86:16 yeah 4:2 21:11 24:25 31:23 33:10 51:13 53:25 55:2 106:23 108:13 109:5 113:4 157:11 180:22 183:22			

[yeah - zuckerberg's]

Page 35

191:25 194:8
year 16:12 20:20
 56:7,10 156:22
years 13:6,16,21
 16:6 20:14 34:8,8
 45:24 47:8 86:8,8
 127:25 157:10,20
 166:3 173:10
 175:18
yellow 62:9 135:8
 138:8,13 147:18,19
 147:20 161:15
 162:5 183:20
 190:20 192:6
 202:10,15
yellowed 134:8,8
 161:2,3 194:21
yellowing 136:9
 161:19,23
yellowish 161:12
 185:5
yesterday 4:19
york 1:3,21,21,24
 2:15,15 49:6 70:13
 120:23 163:18,23
 196:25 201:16
 209:3,5,9 211:3,3
yorker 133:11

z

zero 190:10
zuckerberg 1:8
 37:23,24 49:3 50:12
 59:24 60:7,12,15
 62:23,24 70:4,9,19
 70:20 71:3,4,10,11
 71:14,18,19 72:11
 92:17 102:6 109:10
 211:5
zuckerberg's 48:18
 60:3,10,17,25 69:21
 69:22 72:7 101:9,13
 101:16,25